

ELEVENTH EDITION

CALIFORNIA

REAL ESTATE PRACTICE

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CALIFORNIA REAL ESTATE PRACTICE ELEVENTH EDITION

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INTRODUCTION

California Real Estate Practice is the practical application of real estate knowledge to meet the needs of buyers, sellers, lessors, and lessees. It is a course in what to do for success in meeting these needs.

California Real Estate Practice is not a repetition of *California Real Estate Principles*; however, it does cover the practical application of much of what you learned in *Principles*, as well as the “how” of being a real estate professional.

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UNIT ONE



GETTING STARTED IN REAL ESTATE

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- explain the effect the real estate industry has, both directly and indirectly, on the economy;
- describe the unique nature of the real estate marketplace and changes that are taking place within the real estate profession;
- explain how brokers are compensated and changes taking place as to compensation;
- list specialties available within or related to the real estate profession;
- describe the relationship between brokers and salespeople and factors to consider in choosing a broker; and
- explain the necessity of planning, goal setting, time management, attitude, continued education and training for a real estate career.

KEY TERMS

broker association	independent contractor	Realtist
buyer’s market	inventory	seller’s market
California Association of REALTORS®	mentor program	social media
caravans	multiple listing service	stratified marketplace
completed staff work	must-buy buyer	team concepts
daily planning	must-sell seller	will-buy buyer
desk fee	National Association of REALTORS®	will-sell seller
e-PRO certification	office procedures manual	workers’ compensation insurance
employee	100% commission office	
goal setting	personal assistant	

WHAT IT MEANS TO BE A REAL ESTATE PROFESSIONAL

It has been said that without the first real estate salesperson, human beings would still be living in caves. This may be an overstatement, but it is true that the real estate profession has played a significant role in improving the living conditions and lifestyles of our citizens.

Although we deal with a product—real estate (namely, the land and that which transfers with it)—the human factor of identifying and fulfilling the needs of others is the dominant emphasis of the real estate profession. We reach success in the real estate profession by first successfully meeting the needs of others. Real estate is, therefore, more a *people* than a *property* profession. Your understanding of people and their motivations will determine your future as a real estate professional. You might consider taking an interest aptitude test to see if you have the *people interests* that fit a career in real estate.

This is a profession that you can be properly proud of, because in its practice you guide buyers in making their largest purchase, one that will become a significant part of their lives—their homes. You not only guide sellers in selling what has likely become more than just real estate, but both a place of memories and the repository of a significant portion of their savings. For the buyer as well as the seller, home purchases are important in both emotion and dollars.

REAL ESTATE AND THE ECONOMY

The real estate industry, which includes the production as well as the distribution of real estate, has historically been an engine driving both the California and the U.S. economies.

More jobs have been created in the real estate and related supply, construction, and service industries than from any other source. In addition, many industries benefit from a strong real estate market—in new as well as existing properties. These include producers of furniture, appliances, window coverings, fencing, et cetera, as well as service providers.

Real estate salespeople work at the end of the production and marketing pipeline keeping our products moving. If we were unable to effectively market products, the entire process would slow, resulting in increased unemployment that would have been a recessionary effect on our entire economy.

THE REAL ESTATE MARKETPLACE

The real estate marketplace, where you will be aiding buyers and sellers, is generally regarded as an imperfect marketplace. Prices asked for similar properties vary, and the selling price is often less or more than the asking price. Values generally are set by supply and demand, not by sellers. It is the price a buyer will pay and not the price a seller desires that ultimately determines value. The only constant in the real estate marketplace is change. Inventory and value are not static. The real estate marketplace differs from other commodities. Some of the reasons why the real estate marketplace is unique include the following:

Real estate is not homogeneous

- **Product differentiation**—Every property is different. No two locations are the same. There are usually differences in square feet, interior design, architectural style, landscaping, decorating, age, maintenance, and other amenities. Because of these differences, it is impossible to determine accurate value scientifically. An appraiser tries to evaluate these differences but only estimates what the sale price should be.
- **Emotion**—Emotion plays a significant part in a purchase decision. Often a buyer wants just one particular property after having turned down similar offerings without knowing why. This emotional desire can play a significant role in determining what a buyer will pay. Emotion plays a lesser role for sellers, who are more likely to make their decisions based on logic.
- **Buyer and seller knowledge**—While internet homesites have resulted in better informed buyers and sellers, the listing prices alone can be misleading. List prices are not sale prices and many listings expire unsold or are sold at prices less or greater than the list price. Location also plays a significant role in determining value. Similar houses on different blocks or different streets can have significantly dissimilar values. In a thin market with few sales for a type of property, the internet data can be especially misleading. Some buyers and sellers in the marketplace have imperfect or erroneous knowledge of prices paid for similar properties. Because of this imperfect knowledge, sellers have sold at what we may consider below-market prices, and sellers have priced their properties so high that buyers show no interest in them. Similarly, imperfect knowledge can result in a buyer paying more than what might be regarded as a reasonable price. The growth of buyer brokerage, where a sole agent represents a buyer, has reduced the likelihood of a buyer overpaying.

- **Will-sell versus must-sell owners, and will-buy versus must-buy buyers**—Buyer and seller motivation play a significant role in what is asked for a property by an owner, what is offered by a buyer, and what an owner will accept. Unmotivated sellers—that is, **will-sell sellers** (those who don't need to sell but who will sell if the price is right)—frequently place property on the market at above-market prices. Sellers who are motivated to sell will be more realistic in their pricing. When a seller is highly motivated or desperate, a **must-sell seller**, the price asked could be less than the sale prices of similarly desirable properties. The degree of seller motivation also will affect the likelihood of a below-list-price offer being accepted. Included in must-sell sellers are those in foreclosure sales to avoid foreclosure as well as short sales and lender dispositions of lender-owned real estate. Lender-owned real estate is usually called REOs (Real Estate Owned). When many such properties are on the market, they have a negative effect on all similar properties in the marketplace. **Will-buy buyers** are buyers who don't really have to buy. Investors and speculators are included in this group. Will-buy buyers generally look for motivated must-sell sellers; in other words, they're often bargain hunters. **Must-buy buyers** generally look for properties that meet their specific needs. While even must-buy buyers like bargains, they are more likely to pay a reasonable price. Successful real estate professionals concentrate their time on probabilities rather than possibilities, which means giving priority to motivated owners and motivated buyers.
- **Terms**—Because of the dollar value of the purchase, real estate sales tend to be very sensitive to interest rates. Higher interest rates can depress the marketplace because fewer buyers will qualify for loans. Lower rates tend to stimulate the market as more potential buyers qualify for loans. Investors are less likely to borrow money to invest in real property when interest rates are high, because the rate of return on the investment could be disappointing compared with the interest payments the investor would be required to make. By the same token, an investor would be more likely to borrow funds to invest in real property when interest rates are low. If a seller is willing to finance a buyer at a below-market rate of interest, the seller may be able to obtain a premium price for the property. Lower interest rates alone will not stimulate the economy if lenders are reluctant to loan.

Down payment requirements affect sales. When property can be purchased with low down payments, many renters are able to become buyers, which stimulates sales. Inversely, the requirement of lenders for higher down payments results in fewer buyers, which can depress the marketplace.

Sale prices in a seller's market may actually be greater than the list price.

The economic forces of **supply and demand** place pressure on prices to rise or fall. In a **seller's market**, buyers must compete among themselves for properties. In a seller's market, there may be multiple offers for a property. Prices will increase in a seller's market. The reverse is true of a **buyer's market**. In a buyer's market, there are many sellers and few buyers, so sellers must compete for the available buyers, which usually means the lowering of prices.

Over the long term, real estate values have tended to increase significantly due to increased demand, which is affected by population movement and growth. However, real estate values don't always increase. Economic factors, as well as a perceived desirability, can result in a stable or even declining market. Because price is a function of supply and demand, the areas and properties maintaining the greatest desirability will have the least downward pressure on prices.

A number of factors led to the 2008 meltdown in real estate values. Some of these included the following:

- A rapid rise in real estate values. Where values have increased rapidly, they are likely to show a rapid decline with a change in demand.
- Speculators entering the housing marketplace led to a false sense of actual housing demand. Many developers encouraged multiple sales to speculators, which helped to raise prices. When the market activity slowed, speculators sought to unload their inventory at prices that in many cases were less than what developers were selling the units for. Many speculators defaulted on their loans, resulting in foreclosure sales, which drove prices down further.
- Refinancing of homes had become a prime engine of our economy. People were using their homes like credit cards to obtain money for consumer goods. When home values declined, many homeowners realized they were upside down on their loans, meaning that they owed more on their homes than the homes were worth. The result was that many owners walked away, leaving their homes to the lenders.
- Exotic loan types such as option-arms allowed borrowers to qualify for loans with a low monthly payment. When the honeymoon period of low payments ended, the loans required an amortized payment. Payment shock coupled with a declining market encouraged loan defaults.
- No down payment loans or very low down payment loans made from about 2003 until 2007 resulted in many buyers realizing they had no equity in their homes and, in many cases, owed tens or even hundreds of thousands more than similar homes were selling for. This led to a great many loan defaults.
- "No doc" loans were made with no asset verification; borrowers were not required to provide tax returns, bank statements, or pay stubs to lenders. This led to many fraudulent loan applications.
- Lenders who were not keeping the loans but intended to sell them to others became caught up in a "make hay while the sun shines" attitude. Appraisers who did not rubber stamp purchase prices were replaced by those who were more accommodating.
- Ready credit led to developers building more and bigger projects. There was a belief that prosperity for them would never end.
- Rating services gave collateralized mortgage securities investment grade ratings that in retrospect were not justified. The ability to sell these securities fueled the demand for more of them.

- The economies of the world are interrelated and a world downturn led to lower exports, a lack of consumer confidence, lower imports and loss of jobs in both production and services. With two incomes necessary for many families, the loss of an income or even a reduction in hours led to many owners being unable to make mortgage payments.

We experienced an economic meltdown in 2008 that depressed the real estate market. However, the market moves in cycles and our recovery has been strong. When the market was depressed, there was a brisk market in foreclosed properties.

In 2012, several large investment groups entered the marketplace seeking to buy thousands of lender-owned homes. The increased demand resulted in higher prices being paid for distressed properties and was also reflected in higher prices for the resale market. Because few new homes had been built while the market was depressed, the demand for housing, coupled with low interest rates, caused rents to increase and home construction to come back strong. By 2018, home prices in most urban areas of California had exceeded the highs of 2007. The marketplace corrected itself.

The pandemic significantly reduced home construction in 2020. The reduction in supplies coupled with low interest rates resulted in a sharp increase in sales prices for homes.

The real estate market is stratified based on price.

The real estate marketplace is also a **stratified marketplace**—stratified based on price range. As an example, there might be a seller's market in homes priced under \$750,000, with many more buyers than sellers. At the same time, there might be a glut of homes priced between \$1 million and \$2 million, with few buyers.

The real estate professional, coupled with the internet, helps to bring a measure of order to what could otherwise be a chaotic marketplace. A broker's knowledge, as well as internet sites, gives both buyers and sellers comparables and enables the agent to educate them in the realities of the current marketplace. Membership in a **multiple listing service** (MLS) expands the inventory of comparables to provide the broker with information on a much broader scale. This information includes more than offering prices, which can be found on the internet; it also includes actual sale prices, special sale conditions, time to sell, as well as property that failed to sell during the listing period.

By serving as a marketing center or clearinghouse, real estate brokers can analyze buyer needs and resources to match buyers with properties and guide them to the culminations of sales. They can also help owners effectively market their property to maximize demand, resulting in a satisfactory sale.

TRENDS IN REAL ESTATE BROKERAGE

The real estate profession has been undergoing significant change in the past few years. This change has included the following:

- Greater emphasis on determining client needs
- Greater interest in single agency buyer representation

- Better-trained and technology-oriented salespeople who regard real estate as a profession
- Buyers and sellers showing greater interest in professional designations, education, and experience of agents
- Expansion of large franchise offices through the absorption of former independent offices (though there will still be a place for small offices specializing in a geographic area or a type of property)
- Growth of the team concept where real estate salespeople form partnerships within a firm
- Greater use of the internet by homebuyers
- Increased number of marketing websites
- Decreasing reliance on traditional print advertising
- Growth of personal and office websites
- Increased website sophistication, with virtual tours, movement, and sound
- New apps that provide greater data and increase agent effectiveness
- Use of interactive technology, such as robots, to maximize agent effectiveness
- Use of informative blogs
- Use of social networking sites
- IDX (Internet Data Exchange) cooperation between brokers allows MLS members to display listings of other offices on their websites
- Electronic signatures—by using electronically stored signatures, DocuSign users can annotate and sign electronic documents, allowing for instantaneous transmission of signed documents
- Use of internet-generated forms
- Greater use of email and other cloud-based services to transmit information and contracts
- Mergers of MLSs, providing greater coverage for listings
- Use of smartphones by salespeople, not only to communicate with clients but also to access information
- Increased use of licensed and unlicensed professional assistants
- A change in the role of real estate brokers. With the internet, more buyers are doing their homework and know values and what is available. Agents are being sought to make showings of buyer-selected properties and help finalize a purchase. This has had an impact on fee schedules with the growth of online brokerage firms.
- Growth in one-stop shopping, where real estate firms are able to offer affiliated services
- Growth in number of firms offering lower rates of commissions with lower levels of services

- Increasing number of firms offering 100% commission to attract agents, with brokers relying on ancillary services such as escrow and any agent desk fees for compensation
- Growth of offices offering 100% commission for the remainder of the year after salesperson reaches a sales goal
- The new buyer programs where firms use technology (algorithms) to buy homes and then assume the marketing function. This provides an owner with a quick sale without the delays and problems associated with conventional sales.
- Increase in marketing efforts for foreign buyers
- Greater importance on marketing to both seniors and singles
- Increased awareness of the diversity of the people being served, which is not limited to race, nationality, culture, or religion. It includes people with handicaps, people in recovery, veterans, victims of domestic violence, et cetera. Understanding their needs and concerns is essential to serving these diverse groups.
- More negotiation in languages other than English. When the agent does not speak the language, a qualified interpreter should be used (not a minor child).
- Several states have recently eliminated the real estate salesperson's license and are requiring that all licensees be brokers. The purpose stated by legislators is to enhance consumer protection and increase the professional competence of all licensees. Other states have shown interest in this development, and it could become the norm across the nation. For California to adapt the one-license concept, all licensees would have to meet broker licensing requirements rather than the current lesser educational requirements for salespeople.
- Changes in broker compensation

The real estate marketplace is constantly undergoing change. Energy and water problems will affect the industry. Political change could include changes in capital gain rates, as well as loss of all or part of homeowner deductions for interest and taxes. Licensees will have to adapt to conditions beyond their control. Licensees realize that the marketplace is dynamic and not static.

BROKER COMPENSATION

Real estate commissions are negotiable. They are generally a flat fee or a percentage of the sales price. Even though the fee is negotiable, most brokers will stick to the same percentage fee for similar properties. It is an antitrust violation for brokers to agree among themselves as to minimum fees to be charged; however, most major brokerage firms charge similar fees.

There have always been cut-rate or discount brokers that have used their lower fees to market their services. In order to obtain the cooperation of other brokers for sales purposes, many of these discount brokers will have a commission

split whereby the sales broker receives a more normal commission and the listing broker takes less. Assume most brokers charge 6% for a residential sale and the normal commission split is 50% to the listing broker and 50% to the selling broker. If a broker took a listing for 5% commission, the broker might agree to give the selling broker the normal 3% and take 2% for his own efforts. A problem with working for a lesser commission is that the listing broker might rely more on other brokers and reduce marketing efforts and expenses.

In a seller's market, with few sellers and many buyers, discount brokerage firms tend to be more successful. In a buyer's market with fewer buyers and many sellers, discount brokers have greater difficulty competing because of the need to increase sales effort while offering to perform for a lesser fee.

Prosperity in the real estate profession (fueled by low interest rates and escalating prices) had resulted in many new entrants into the real estate profession, as well as different approaches to service and pricing. Some brokerage offices charge flat fees rather than a percentage of the sales price. While some discount brokers offer full brokerage services, there has been a growth in limited-services offerings for discount fees. For example, several brokers agree to make a charitable donation to the buyer's or the seller's charity of choice using an agreed portion of fees received. It makes for "feel good" clients without discounting fees.

Some brokers offer MLS access plans, where for a fixed fee they will place the owner's property on an MLS site. The owner will agree to pay a selling broker a fee but will be saving the listing broker's fee. Some brokers offer a choice of plans with various services.

Some limited-service brokers help the owner to sell without an agent. They prepare ads, provide website placement, provide open house material and For Sale signs, and will write up the sales contract should a buyer be procured by the seller.

Some offices have come up with à la carte fee pricing for their services. The owner decides what they want, including MLS placement, placement on additional websites, internet virtual tours, open houses, brochures, and the writing of sales contracts. The owner pays for services selected even if a sale is not completed.

Some buyer agents charge the buyers for their time much as other professionals do. They might provide the first home tour, of up to three hours, at no charge but have an hourly charge thereafter. If the broker shares in a listing agent's commission, then the hourly fee would be reduced or eliminated.

eXp Realty is a fast-growing, cloud-based brokerage of around 65,000 agents worldwide. The agents have a 70/30 commission split, which changes to 100% for the agent when a certain sales point is reached. Agents are given the incentive to recruit additional agents by receiving a fee for transactions of those they recruit. Agents also receive stock in the corporation based on sales.

Some buyer agents offer to rebate a portion of the commission received from the sellers to the buyers. They hope that the rebate will increase the number of buyers, which will more than offset the rebate.

Redfin is a lower-rate online brokerage firm that pays its own agents a salary rather than a commission. Most sellers pay a reduced listing commission of 1.5% rather than more traditional fees of 2.5% to 3%. Redfin sellers still have to pay a commission of roughly 3% to the selling agent. Redfin also acts as a buyer's agent, rebating a portion of the commission received to the buyer based on a sliding scale.

<https://www.rexchange.com/>

REX is a digital platform and real estate brokerage that uses artificial intelligence and machine learning to identify buyers and sell homes. The brokerage operates outside the MLS and charges a total fee of 2.5%. The firm advertises as a full-service brokerage. It uses agents and also places listings on numerous internet sites, and allows viewers to make nonbinding offers. The potential buyer views the property in person at owner-conducted open houses where the buyer interfaces in the homes with robots that provide requested data. Interested buyers are contacted by an agent who finalizes the contract. Only the REX agent is involved.

There are countless variations on the above fee arrangements. When the real estate market declines, the average commission increases. According to *Real Trends*, an industry publication, the average commission jumped from a low of 5.02% in 2005, a time of great sales activity, to 5.4% in 2010. By 2021, the rate had fallen to 4.92%. The statistics seem to indicate that brokers are more likely to work for a lower commission when sales are relatively easy than when sales are expected to take greater effort. Discount brokerage firms aided by the internet will likely have an effect on further lowering of the average commission rate.

Some analysts have predicted that real estate will follow the path of stock brokerage with lower and lower fees and clients who make decisions based solely on costs. While higher property prices, a strong market, and greater competition can be expected to place pressure on fees, most real estate buyers require the services that only working face to face with an agent can provide. It takes people skills to understand peoples' needs, and selling is simply satisfying those needs. A property sale cannot be reduced to moving a cursor and pressing an enter key.

The real estate market is local in nature and requires in-depth local knowledge. Each buyer is different as to needs, wants, and purchasing ability. The agent must gain the trust of buyers to lead them through what is likely to be the most important purchase of their lives.

LICENSING

Except when dealing as a principal, most acts in real estate are in an agency capacity for or in the hope of compensation and require a real estate license.

Applicants for both real estate salesperson and broker licenses must be at least 18 years of age and be honest and truthful. Nonresidents of California must file a consent to service of process so they can be sued in California. In addition, there are course requirements for salespersons and brokers. Broker applicants have an experience requirement. The passing percentage is 70% for a salesperson exam and 75% for a broker exam.

The Department of Real Estate is prohibited from inquiry as to a licensee's citizenship.

AN OVERVIEW OF GENERAL BROKERAGE

Most real estate licensees are engaged in representing buyers or sellers or both buyers and sellers in the sale of residential property. The reason is obvious: most properties that are sold are improved residential properties, and most of these are single-family dwelling units.

Real estate salespeople find owners willing to sell their properties or buyers desiring to buy property and secure agency agreements (listings). They then seek buyers for their property listings or properties for their buyer-agency listings. Real estate brokers and salespeople are able to expand their activities beyond their own listings because of a unique system of cooperation that exists among brokers.

Brokers who are members of an MLS make their sale listings available for other agents to sell. Therefore, any member of an MLS can show and sell a listing of any other member. Even agents who are not members of an MLS service will generally cooperate on their listings. By having access to this huge market inventory, an agent can locate a property that best meets the needs and is within the resources of a prospective buyer. Cooperation is the cornerstone of modern real estate brokerage. Cooperation includes sharing of commission. Members of an MLS system have agreed on sharing arrangements, but agents who are not members should have commission-sharing agreements in writing to avoid misunderstanding.

AREAS OF SPECIALIZATION

There are other areas of activity besides the listing and selling of traditional single-family homes. These areas of real estate activity include the following:

- **Manufactured home sales**—While the industry prefers the term *manufactured home*, many people still refer to these homes, which are transported to a site on their own chassis, as *mobile homes*. Mobile homes differ from other types of housing in that they are often located on leased sites (mobile home parks). Real estate licensees can list and sell mobile homes that are 8 feet by 40 feet or larger in rental spaces, as well as with the land. Real estate licensees cannot sell new mobile homes without land. These new mobile homes can be sold only through dealers licensed by the Department of Housing and Community Development. Mobile homes fill a significant need for lower-cost housing, as well as a lifestyle need in retirement housing. Many salespeople specialize in mobile home sales.
- **Tract sales**—Many salespeople like to sell new homes in subdivisions because they like selling a product at a fixed price. Buyers generally arrive at tract sales because of developer promotion.
- **Residential income property (multifamily residential units)**—Brokers, as well as salespersons, often choose this specialty, although agents who handle primarily single-family home sales can also be involved with this type of income property.
- **Speculator (flipper) sales**—Distressed or problem properties are sold to investors who intend to resell at a profit rather than hold for income.

Agents develop a clientele of buyers and then seek properties that meet their criteria.

- **Commercial property**—Brokers and salespeople may choose this as a specialty; furthermore, many agents may specialize by type of property. For example, some agents handle only minimalls, while others may specialize in office buildings, retail stores, or warehouses.
- **Industrial property**—Factory and warehouse specialists make relatively few sales, but the dollar volume in these sales tends to be high. Within this field, there are subspecialties, such as research and development facilities.
- **Business opportunities**—Businesses are listed and sold with or without real estate. It is a specialized field, and very few residential sales agents ever get involved in a business opportunity sale. Some specialists handle only particular types of businesses, such as taverns, restaurants, or motels.
- **Land and farm brokerage**—Generally, these specialists cover large geographic areas. Knowledge of farming is an important attribute for these agents. In California, many agents specialize in selling acreage parcels to investors and/or developers.
- **Lot sales**—Many agents specialize in listing and selling lots for investment purposes, as well as to provide builders with a supply of real estate. General real estate brokerage offices also handle the sale of lots, as well as sales of land parcels of all sizes.
- **Auction sales**—Auctions are now being used to sell all types of real property. In England and Australia, auctions play a greater role in real estate brokerage activity than in the United States. The importance of auction sales in the United States has been increasing. Many firms hold online auctions. There are a number of firms that deal only in auction sales.
- **Time-shares**—Besides the sale of new time-shares (which is selling a vacation lifestyle), there is also a growing market in time-share resales.
- **Counseling**—Some experienced professionals provide expert advice to buyers, sellers, developers, and builders on a fee basis.
- **Subdividing**—Many real estate professionals have gone into subdividing to provide a stock of parcels for development.
- **Loan brokerage**—Loan brokers generally find investors for trust deeds and property owners who desire to borrow on their properties. They bring these lenders and borrowers together for a fee.
- **Mortgage loan activities**—An NMLS (Nationwide Multistate Licensing System) license is required to originate loans. Real estate licensees who are licensed as mortgage loan originators may act as lenders or agents in making and arranging loans. These activities differ greatly from normal brokerage activities because greater administrative skills are needed. However, both sales and mortgage activities require a strong desire to meet the needs of others. (Mortgage loan activities that require a real estate license are discussed in Unit 12.)

- **Personal assistants**—Many licensed agents as well as unlicensed personnel have chosen to work for other agents as salaried assistants. They like the security of a regular paycheck, as well as the chance to use organizational skills. Assistants allow agents to better utilize their time by handling tasks that the agents can delegate. Some agents use virtual assistants for the internet. They update internet information, send additional data to responses, answer email requests, and provide names and information to their employing agent. The National Association of REALTORS® developed a virtual assistants training program for military spouses.
- **Property management**—As in other specialties, there are subspecialties based on the type of property. (Property management is covered in detail in Unit 15.)
- **Leasing agent**—Leasing agents are not necessarily property managers. They generally charge a fee based on the gross receipts of the lease entered into. There are subspecialties such as residential leasing, industrial leasing, and commercial leasing.
- **Appraisal**—Although a separate license is required, a great many appraisers started out in real estate sales.

BROKER/SALESPERSON RELATIONSHIPS

The real estate broker is almost always an **independent contractor**. According to the *Real Estate Reference Book*, “an independent contractor is one who, in rendering services, exercises an independent employment or occupation and is responsible to the employer only as to the results of his or her work.” Very simply, this means that an independent contractor is not under the direction and control of the employer regarding the manner in which work is carried out. The independent contractor is responsible to the employer only for the results. For example, real estate brokers are responsible for results to their principal (employer), who could be a buyer, a seller, a lessor, or a lessee.

Real estate brokers are required to have a written contract with their individual salespeople. Most contracts identify the working relationship of the salesperson as that of an independent contractor (Figure 1.1). California Business and Professions Code Section 10032 allows brokers to hire classified salespersons as employees or independent contractors. Most contracts specify an independent contractor choice because it relieves the broker of unemployment compensation, as well as withholding requirements. The statute provides that obligations to the public (liability) apply to the broker regardless of classification of employee or independent contractor. Section 10177(h) of the Business and Professions Code requires that brokers supervise their salespeople, and exercise of supervision in the performance of work precludes an independent contractor relationship as to liability. Formerly, the broker was required to review contracts prepared by salespersons within five days. This has been replaced by a policy of “reasonable supervision.”

FIGURE 1.1: Independent Contractor Employment Agreement

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<p><u>INDEPENDENT CONTRACTOR EMPLOYMENT AGREEMENT</u> For Sales Agents and Broker-Associates</p>

NOTE: This form is used by an employing broker when entering into an agreement employing a sales agent or a broker on terms calling for the employee to be treated for tax purposes as an independent contractor, to establish the duties of the broker and agent, earned fees and how the fees due the employee will be allocated and shared.

DATE: _____, 20_____, at _____, California.
Items left blank or unchecked are not applicable.

1. Broker hereby employs Agent as a real estate sales agent or broker-associate, until terminated by either party, on the following stated terms.
 - 1.1 Agent to be treated as an independent contractor for tax purposes.
2. **AGENT** agrees:
 - 2.1 To maintain a real estate license in the State of California.
 - 2.2 To provide brokerage services only on behalf of Broker.
 - 2.3 To follow the Broker's policy manual and any directions orally given by Broker.
 - 2.4 To use only those real estate forms authorized by Broker.
 - 2.5 To make complete and immediate disclosure to Broker of any correspondence or document made or received.
 - 2.6 To immediately deliver and account to Broker for funds received by Agent in the course of this employment.
 - 2.7 To participate in educational programs and meetings specified by Broker.
 - 2.8 To fully inspect the physical conditions of any property to be sold or bought for clients.
 - 2.9 To obligate Broker to no agreement without Broker's prior consent.
 - 2.10 To expose Broker to no liability to any third party without Broker's prior consent.
 - 2.11 To furnish their own transportation and carry a liability and property damage insurance policy in an amount satisfactory to Broker with a policy rider naming Broker as co-insured.
 - 2.12 To faithfully adhere to the Real Estate Law of the State of California.
 - 2.13 To join and pay fees for membership to professional organizations in which Broker is a member.
 - 2.14 To contribute to the defense and settlement of litigation arising out of transactions in which Agent was to or shared fees, in an amount equal to Agent's percentage share of the fees.
 - 2.15 Social Security Number _____ / _____ / _____
 - 2.16 Other _____
3. **BROKER** agrees:
 - 3.1 To maintain a real estate Broker's license in the State of California.
 - 3.2 To maintain office(s) with proper facilities to operate a general real estate brokerage business.
 - 3.3 To maintain membership in the following professional organization(s):

☐ Multiple Listing Service
☐ Local Branch of the California Association of Realtors and National Association of Realtors
☐ _____
 - 3.4 To maintain listings.
 - 3.5 To provide advertising approved by Broker.
 - 3.6 To provide worker's compensation insurance for Agent.
 - 3.7 To maintain the following insurance coverages for Agent:

☐ Errors and Omissions ☐ Life ☐ Health ☐ Dental
 - 3.8 To pay Agent as specified in the Broker's fee schedule.
 - 3.9 To notify the DRE in writing of the employment and termination of the employee if they are being hired as a broker-associate. [See **RE** Form 215]
 - 3.10 Other _____
4. **General Provisions:**
 - 4.1 Agent has the right to purchase any properties listed by Broker on full disclosure to the seller of the Agent's activities as a principal, and without diminution of fees to Broker.
 - 4.2 Broker has the right to reject any listing or retainer obtained by Agent.
 - 4.3 Broker to determine whether any litigation or dispute involving Broker, or their business and third parties, arising from Agent's activities, will be prosecuted, defended or settled.
 - 4.4 Arbitration: Any dispute between Agent and Broker or with any other Agent employed by Broker that cannot be settled by Broker, or resolved by the State Labor Commission or by non-binding mediation, will be arbitrated under the rules of the American Arbitration Association.
 - 4.5 ☐ **See addendum for additional provisions.** [See **RPI** Form 250]

FIGURE 1.1: Independent Contractor Employment Agreement (continued)

----- PAGE 2 OF 2 — FORM 506 -----

5. Broker's Fee Schedule:

5.1 Broker is to pay Agent a fee for participating in a sales transaction evidenced by a purchase agreement which confirms Agent is acting as an agent for the Broker and Broker receives a brokerage fee on the transaction. Broker is to disburse Agent's fee as soon as practical after Agent's completion and submission of the transaction file generating the fee.

5.2 The amount of fee due Agent is _____% of the funds remaining from the brokerage fee received by Broker under sections 5.1 or 5.10b after first deducting the following amounts:

- Payment to other brokerage offices of sums due them for their participation in the transaction;
- Payment to Broker's franchisor of the fee due the franchisor from the transaction;
- Payment to Broker of one-half of the then remaining funds if another Agent of Broker is entitled to a fee for negotiating the other end of the transaction;
- Other deductions _____.

5.3 From each fee due Agent and before disbursement, Broker will deduct the following amounts and any amounts otherwise due Broker from Agent:

- An advertising or promo charge of \$ _____.
- An errors and omissions insurance coverage charge of \$ _____.
- A charge of \$ _____ for _____.
- Disbursement to another Agent of the Broker, transaction coordinator or finder with whom Agent agreed to share the fee due under section 5.2.

5.4 The percentage participation by Agent in the funds remaining under sections 5.2 is adjusted to _____% on the following event _____, and will apply until _____, 20____.

5.5 Agent is to pay Broker, on the first of each month of employment, a desk fee of \$ _____.

5.6 Any expenses incurred by Broker in a transaction negotiated by Agent, such as travel expenses, meals, attorney fees, printing, listing service fees, etc., will be deducted from the fee due Agent.

5.7 If all or part of the fee is received in property other than cash, Agent is to obtain Broker's prior approval. In this event, Broker will make one of the following determinations for disposition of the property:

- Divide the property between Broker and Agent in kind, based on the fee schedule; or
- Pay Agent their dollar share of the fee in cash; or
- Retain the property in the names of Broker and Agent, or their trustee, and thereafter dispose of it when and on terms Broker and Agent previously agree. Any ownership income and expenses will be shared between Broker and Agent in proportion to their share of ownership.

5.8 On termination, Agent to be paid as follows:

- Closed Transactions: Agent will receive their share of fees on all transactions which are closed before termination.
- Pending Transactions: Agent will receive their share of fees on all pending transactions which close after termination, subject to fee limitations under section 5.9.
- Unexpired Listings and Retainers: Agent will receive their share of fees if the client enters into a transaction during the written listing or retainer period. Agent will not earn a fee under any extension of the listing or retainer obtained after termination, subject to fee limitations under section 5.9.

5.9 Fee Limitation: If on termination Agent has pending transactions under section 5.1 or unexpired listings or retainers procured by Agent which require further services normally rendered by Agent, Broker will direct another employed Agent or himself to perform these services. For these services after termination, a reasonable share of the fee will be deducted from the fee due Agent.

5.10 Compensation From Prior Employment: Monies received by Broker from Agent's prior employing brokers representing fees earned by Agent while employed by that broker are to be disbursed by Broker as follows:

- ☐ Agent to receive 100% of the monies received by Broker.
- ☐ The monies are to be shared with Agent at the percentage set in section 5.2.
- ☐ Broker and Agent, respectively, to share the monies _____.

I agree to render services on the terms stated above.

Date: _____, 20____

Agent's Name: _____

DRE #: _____

Agent's Signature: _____

Address: _____

Phone: _____ Cell: _____

Email: _____

I agree to employ Agent on the terms stated above.

Date: _____, 20____

Broker's Name: _____

DRE #: _____

Broker's Signature: _____

Address: _____

Phone: _____ Cell: _____

Email: _____

FORM 506

09-18

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Brokers and salespeople contract as independent contractors as required by the Internal Revenue Service. The IRS will treat the real estate salesperson as an independent contractor if the following three criteria are met:

1. The salesperson is licensed as a real estate agent.
2. Reimbursement to the salesperson is based solely on sales, not on hours worked.
3. There is a written contract stating that the salesperson will be treated as an independent contractor for tax purposes.

In California, by law, real estate salespeople can self-designate as independent contractors.

The economic reason a broker wants salespersons to be independent contractors is that if they are independent contractors, the broker is relieved of withholding taxes and Social Security, as well as not contributing to Social Security for the salesperson.

Real estate salespeople are treated as employees for the purpose of workers' compensation insurance coverage. Workers' compensation insurance provides medical expense, lost wages, and rehabilitation costs to employees who are injured or become ill in the course and scope of their jobs. It also provides death benefits to families of employees killed on the job.

Despite the IRS treatment of a real estate salesperson as an independent contractor in California, brokers are responsible for wrongful acts (*torts*) of their salespeople within the course and scope of employment. Because of this potential liability, many brokers require that their salespeople carry high limits of automobile liability insurance and that brokers be named as insured under the policies. If a salesperson has access to the funds of others (such as a property manager who collects rents and deposits), brokers might obtain fidelity bonds to protect themselves from a salesperson's embezzlement. Offices also carry errors and omissions insurance policies that offer liability protection for acts of brokers and agents. Errors and omissions insurance typically does not cover pollution on the property, physical harm to others, or damage to property caused by the insured. Policies typically have deductibles, and the cost of the policy is related to business volume.

While brokers must carry **workers' compensation insurance** for salespeople who are considered for this purpose to be employees, they need not carry unemployment insurance coverage because commissioned salespeople are not eligible for unemployment insurance benefits. Also, because salespeople are paid solely by commission, minimum wage laws do not protect them.

Brokers are required to report the annual earnings of a salesperson to both the licensee and the IRS using IRS Form 1099.

Brokers can elect to work as salespeople for another broker. They are considered **broker associates**. They are treated as salespeople. However, broker associates can work for themselves or for more than one broker.

A broker must notify the real estate commissioner in writing when a broker enters employment as a salesperson or is terminated.

FIGURE 1.2: Employee or Independent Contractor? IRS Considerations

Factors Indicating Control	Employee	Independent Contractor
Is the worker required to comply with employer instructions about when, where, and how work is to be performed?	Yes	No
Is the worker required to undergo training?	Yes	No
Does the worker hire, supervise, and pay others to perform work for which she is responsible?	No	Yes
Must the worker's job be performed during certain set hours?	Yes	No
Must the worker devote full time to the job?	Yes	No
Must the work be performed on the employer's property?	Yes	No
Must tasks be performed in a certain order set by the employer?	Yes	No
Is the individual required to submit regular written or oral reports to the employer?	Yes	No
Is payment by the hour, week, or month?	Yes	No
Is payment in a lump sum?	No	Yes
Are the worker's business and travel expenses paid by the employer?	Yes	No
Does the employer furnish the tools and materials required for the job?	Yes	No
Does the worker rent his own office or working space?	No	Yes
Will the worker realize a profit or loss as a result of her services?	No	Yes
Does the individual work for more than one firm at a time?	No	Yes
Does the worker make his services available to the general public?	No	Yes
Does the employer have the right to fire the worker?	Yes	No
Does the worker have the right to quit the job at any time, whether or not a particular task is complete?	Yes	No

Note: These factors are only possible indicators of a worker's status. Each case must be determined on its own facts, based on all the information.

SALESPERSON/SALESPERSON CONTRACTS

Real estate salespeople often team up with one or more other salespeople to form a partnership or selling team. These teams sometimes seem to operate as separate brokerage offices within a brokerage office. The teams are usually organized under written agreements, sometimes for a specified period that provides for renewal by agreement. Team agreements cover adding or termination of team membership. They call for a division of the combined earnings of the group. Commission splits are negotiated within the team. Some teams have a broker who selects the team, supervises all activity, and takes a percentage of total earnings. Other teams have a split based on the role of each agent in a transaction, and they might have a set amount or percentage that goes to the team. Some teams divide duties, such as listing specialist, selling specialist, marketing and office management. Further specialization could be type of property, such as commercial, as well as buyer or seller agents.

Fictitious Business Names and Teams

Specifically, AB 2018 defines a “team name” as a professional identity or brand name used by a salesperson, and one or more other real estate licensees, for the provision of real estate licensed services. AB 2018 specifies that

the use of a team name, as defined above, does not constitute a fictitious business name and would not require a separate license if (1) the name is used by two or more real estate licensees who work together to provide licensed real estate services, or who represent themselves to the public as being a part of a team, group, or association to provide those services, (2) the name includes the surname (last name) of at least one of the licensee members of the team, group, or association in conjunction with the term “associates,” “group,” or “team,” and (3) the name does not include any term or terms, such as “real estate broker,” “real estate brokerage,” “broker,” or “brokerage” or any other term that would lead a member of the public to believe that the team is offering real estate brokerage services, or imply or suggest the existence of a real estate entity independent of a responsible broker.

CHOOSING A BROKER

Many people enter the real estate profession thinking it is a certain path to riches. The average income for first-year agents in California was \$41,000 in 2020, while the average income for all licensees was \$82,611. Agents’ income tends to increase after the first years. Education and experience affect income. The broker you choose to work with can have a significant effect on your income.

At one time, most real estate offices seemed to be running a numbers game. They would take in every real estate licensee willing to come to work for them. Most firms have come to realize that such a practice can be counterproductive in that it can waste both time and money. Today, most offices are interested in agents they believe will fit with their office and either have experience or the drive to learn what is necessary for success. Brokers realize that whom they hire can affect their bottom line—their profit. Direct and indirect costs in hiring an agent who fails to produce can be in the thousands of dollars. Brokers often use the term “desk cost.” This is the total office operational overhead divided by the number of salespeople. If a salesperson fails to contribute at least that amount to the **company dollar** (broker’s share of commission received), then the agent is a negative factor on earnings.

Expect to be asked direct questions about your past work history, what you expect from being a real estate agent, and what you are willing to give to the job as far as effort and dedication. Your job interview is really a two-way interview, with the broker trying to do what is best for the brokerage firm and with you seeking the firm that will best meet your personal goals.

Because your choice of broker could have a significant effect on your success or failure as a real estate professional, don’t jump at the first “come to work for me” offer. You could end up wasting a great deal of what otherwise could be productive

time. More important, an initial experience of feeling like a square peg in a round hole could lead you to abandon what would otherwise be a rewarding career.

Before you even think about talking to brokers, you should understand why fewer than 50% of new real estate licensees are still actively engaged in real estate one year after starting work. Your careful initial choice of a broker will reduce your likelihood of becoming a “failure statistic.”

A contributing reason for such a high rate of failure is lack of training in what to do to be successful. It’s true that some successful agents come into an office absolutely green, observe what successful agents are doing, and then do it themselves, but these agents are the exceptions. In some offices, a new licensee is assigned a desk, provided rudimentary information about using the computer, and will maybe receive a 30-minute briefing. The new agent might be given the task to knock on doors for listings. This can be a frightening task for many new licensees who are not used to rejection. New licensees are often left to learn by osmosis, an approach that is far more likely to result in failure than success.

While many experienced agents generate most of their leads, in some markets floor time is important for new licensees. The amount of floor time offered by the broker could be an important consideration in choosing a broker.

Many offices have weekly sales meetings with skill improvement sessions. Some offices use a **mentor program** in which the new hire assists a successful salesperson for several months. This approach can be very good if the mentor is knowledgeable. While many successful agents are not interested in being mentors or are not skilled at training others, many successful agents enjoy working with a *protégé*. They will bring new licensees along on some calls and show them what they are doing and why, as well as answer questions and make suggestions. While some mentors will help you at no cost, they are more likely to expect you to do some work for them. Others might expect a percentage of your deals. The amount of help the mentor provides will likely be reflected in the percentage the mentor receives from the salesperson’s commissions. There are also professional mentors who have programs with set fees. Before you develop any mentor relationship, check the success of the mentor and others who have been mentored.

Most large offices have a formal training program. Some are excellent, providing motivation and the skills necessary for success. Some offices have training directors who not only conduct training sessions but also work closely with agents to improve their performance. Some offices have extensive CD, video, and audio training libraries, as well as excellent books to augment their training programs and to help develop the skills of success.

Your first few months in real estate are critical because if you can’t see success in the near future, you are likely to drop by the wayside and become a failure statistic. You need a broker who will provide you with the training you need for success. When you talk to brokers, find out details about their training programs, what the office does about continuing skill improvement, and what the office has in the way of a library and training aids. Ask to talk to a recent licensee who works

in the office. Ask pointed questions about the training and broker assistance. You should be actively interviewing the prospective broker rather than being a passive listener.

Find out about the broker's present employees. How long have they been with the office? If everyone seems to be a relative newcomer, it could indicate a serious problem. Find out about the earnings of the full-time salespersons. This is very important because working around successful people can serve as a great personal motivator. If you are working in the midst of a group of marginal producers, their attitudes, perhaps negative, could make it difficult for you to maintain the positive approach required for your success.

You will likely give your greatest consideration to a broker involved in residential sales because most sales are residential. Commercial or industrial sales might offer huge commissions, but the deals that come together are few and often far apart. As a new licensee, you are unlikely to develop the skills needed to succeed in commercial/industrial selling before financial pressures drive you toward a salaried position. In addition, the background and legal knowledge required for commercial, industrial, and business sales are far different than they are for residential sales and generally require intensive education and training. Keep in mind that the sales skills learned in residential sales can be transferred to other areas of real estate. After you have developed these skills, a number of alternatives will be open to you.

Many real estate boards and associations offer training opportunities. The largest broker organization is the **National Association of REALTORS®** (NAR). The **California Association of REALTORS®** (CAR) is the state organization of NAR. Membership in a local board of REALTORS® automatically includes membership in both CAR and NAR. Among the many advantages of becoming a REALTOR® or REALTOR-Associate® are the training opportunities, legal updates, industry news, access to lockboxes, multiple listing services, legal forms (including computer forms), legal services, and interaction with other professionals guided by the same code of ethics. In addition to the National Association of REALTORS®, there are other organizations of real estate professionals that provide educational services and help their members advance in their profession. They include the National Association of Real Estate Brokers (NAREB), whose members use the Realtist designation; the National Association of Hispanic Real Estate Professionals; and the Asian Real Estate Association of America.

Some of these organizations offer regularly scheduled training sessions; others sponsor special training programs. Many board and association offices have libraries that contain excellent training material, and some have bookstores where training materials and supplies can be purchased. The training publications, along with ideas you gain from your local real estate board or association, can materially affect your future.

If you have already achieved success in real estate, the initial training offered by a broker would not be a major consideration in working for that broker, but other support services and commission arrangements could be very important to you.

Some offices offer a sliding commission scale under which the individual salespeople keep a greater portion of the commission dollars as their commissions increase. The purpose of this type of arrangement is to motivate salespeople to achieve greater success, as well as to retain top producers. Health insurance coverage with a broker-paid portion (often related to performance) has been an excellent salesperson retention tool for some brokers.

The salesperson pays the broker in a 100% commission office.

There are a number of **100% commission offices**. In these offices, the salesperson pays a flat desk fee or a desk fee plus a transaction fee to the broker and then keeps all the commissions earned. Desk fees vary based on area, broker's facilities, and support services provided by the broker, such as internet and administrative services and insurance coverage. The desk fee is calculated to cover all office overhead plus provide broker compensation. The broker retains responsibility for the salesperson. Generally, the brokers in 100% offices provide little help to the salespeople, and the salespeople pay for many of their own support services. This type of arrangement is not a good choice for a new licensee, although it can offer benefits for experienced real estate professionals who generate much of their own business. Some offices offer a 100% commission arrangement after the office share of commissions earned reaches an agreed cap amount. The agent receives the full commission for the remainder of the fiscal year. If you are just beginning a real estate career, don't worry about commission splits; 100% of nothing is nothing. Generally, the higher the split, the fewer services provided by the broker to the agent. As a new hire, you want all the help you can get. Figure 1.3 is a worksheet for selecting a broker's office that allows the agent to compare three different brokers.

How to Choose Where to Work

A new licensee is wise to go to work for an office

- that offers a training program as good as or better than those offered by other area brokers;
- where help is provided in the use of electronic media;
- that offers assistance when you need it (for example, an office with a designated person in charge of your training);
- with a good library of books, audiotapes, CDs, and DVDs available for your use;
- that is primarily devoted to the sale of and/or lease in the real estate specialty area you desire to work in;
- where salespeople have good morale, reflected in their length of employment;
- that has a significant proportion of successful agents; and
- that is comfortable for you. You must feel comfortable with the broker, your co-workers, and the operation of the office. If you are uncomfortable, your chances of success are going to be materially diminished.

FIGURE 1.3: Checklist for Selecting a Broker's Office

Brokers' Names			
1.			
2.			
3.			
Benefits provided by the broker	Broker 1	Broker 2	Broker 3
1. New-agent training program			
2. Ongoing training program			
3. Use of a mentor system			
4. Computer training			
5. High-speed internet			
6. Sales and prospect software			
7. Office use of social media			
8. Office website (grade on a 1 to 10 scale)			
9. Additional websites used			
10. Multiple listing service (MLS)			
11. Success of current sales staff			
12. Use of virtual tours			
13. Open-house signs and flags			
14. Desk fees and MLS board fees			
15. Advertising support			
16. Distribution of leads generated by company websites and relocation websites.			
17. Organized farm for new agents			
18. Weekly meeting and caravans			
19. Broker's interest in you			
20. Can you work with management?			
21. Estimated start-up costs			

Because the Department of Real Estate will sell lists of real estate examination applicants, you may be contacted by several local brokers. Friends in the business may also make suggestions. Take your time in your choice because it can have long-lasting implications.

Many enter the real estate profession with the intention of working part time until they learn the business and develop an income. Part-time agents are far less likely to be successful than full-time agents because of the difficulty in being able to serve the needs of buyers and sellers in a timely manner. In addition, few successful brokerage firms will take on a part-time salesperson. Exceptions are time-share sales at special seminars and tract sales.

Brokers compute desk cost as the total office overhead divided by the number of salespersons. Each salesperson's production is expected to cover desk cost, as well as make a contribution to broker profits. A salesperson who, after a training period, consistently fails to produce office revenue sufficient to cover desk cost is unlikely to continue with the brokerage firm.

SUCCESS AND YOUR ATTITUDE

We know that simply moving an agent's desk can change an agent's production. Having successful co-workers around you can serve to generate ideas and motivation to achieve your own success. Unfortunately, the opposite is also true. Having people around you who are unsuccessful or who have a negative attitude can adversely affect your attitude. If they are failures, your chances of failure will be increased. If you associate with successful people, you will likely be associating with people who have a positive attitude. A positive attitude can be infectious, just as the negative attitude of friends and associates can lead you to failure. A negative attitude will lead to a "they aren't really buyers" prejudgment that can make the difference between marginal results and great success.

No one will stand over you in real estate to watch your every move and prod you on. And even though others may reinforce your resolve to succeed, the real motivation for success comes from you. You must be a self-starter who wants to succeed so much that you will continue to strive despite setbacks or the negative attitudes of others. By completing the Success Questionnaire in Figure 1.4, you will gain an understanding of where you are now as well as areas where improvement is needed.

Certainly, motivational seminars, tapes, videos and books help, but these are short-term motivational aids. Long-term success is based on internal motivation to expend the extra effort to learn, to plan, and to practice for your success. Working hard isn't enough. You have to learn to work smart. Think out what needs to be done and why. Plan your work.

You must be interested in people and truly want to help them in meeting their needs. The desire to help and your belief that your product, real estate, offers a solution to their needs will keep you motivated. Use the success of others as a guide to show yourself what can be done. In the same vein, don't become complacent because you are doing better than others. In real estate, don't feel that you are in competition with any other agent. Your only competitor should be yourself. Of course, when you start to realize success, success itself becomes a motivator.

We are seeing a change in the way that many successful salespersons do business. Many have significantly reduced the number of hours they spend in the broker's office. With the use of social media, smartphones, and email, most of their office time has become home based or car based. With reduced direct contact with brokers and co-workers, self-motivation becomes essential for success.

FIGURE 1.4: Success Questionnaire

1. Are you enthusiastic about your work?
Study the unusually successful people you know and you will find them imbued with an enthusiasm for their work that is contagious. Not only are they excited about what they are doing, but they also get you excited. Remember the maxim: "Enthusiasm is like a contagious disease. It must be caught and not taught."
2. How do you overcome objections?
Numerous spoken questions and written questions are being fired at you every day. Do you answer them without hesitation, drawing on your reservoir of knowledge? Do you do so to the satisfaction of the client or prospect? Or is there sometimes a hesitation followed by a garbled description that leaves the clients as much in the dark as they were before?
3. Are you self-confident?
Knowledge gives confidence. A thorough knowledge of both the property in question and the exact advantages that the customer will receive develops this quality of confidence in you, which shows itself in your personality. If the client or customer has confidence in you and your company, a sale may result naturally. The main factor that determines whether customers will have confidence in your product or service is whether they have confidence in you. Your knowledge gives you assurance, a prime factor in assuring others.
4. Do you have the courage of your convictions?
Many times, we cease to be courageous in the face of opposition. It is a sad commentary, but we live in an era when rapid change breeds fear. Conquer fear! Banish worry, because, as someone once said, worry is the interest you pay on trouble before you get it. Keep your fears to yourself, and share your courage with others. Remember, fear is only in the mind.
5. Are your actions and speech positive?
A number of years ago there was a popular song with the words "accentuate the positive, eliminate the negative." You need to think and act positively.
Those who think negatively say, "Business is poor; unemployment rates are more than 9%. That means 9% of the people cannot be considered potential prospects."
Those who think positively say, "Business is great, with only 9% unemployment. That means 91% of the people are potential prospects." However, being positive does not imply that it gives us the right to be dishonest. But we can state facts positively without being dishonest.
6. Are you persistent?
Customers admire a salesperson who has developed persistence. No one has respect for a quitter, a person who readily takes no for an answer. If only 1 in 20 presentations results in a sale, your attitude should be: "Thanks for the no. I'm now closer to the yes." (You should of course be considering it a goal to reduce 1 in 20 to 1 in 19.)
7. Are you a problem solver?
Be a problem solver, not a problem. Problem solvers are people helpers. The basic principles of problem solving are the following:
 - Despite any problem, you can persevere, think, and reach a solution.
 - Use relentless pressure, persistence, and determination.
 - Act as if the problem can be solved. Use the power of positive thinking.
 - Remember, you do not sell properties; you sell solutions to people's problems.
 - Understand completed staff work. The idea of completed staff work is that you should never present your broker with a problem unless you also present your broker with the possible courses of action to take—your recommendations as to a specific action and why.
8. Are you willing to fail?
Perhaps this should be phrased as "willing to try, regardless of the chance of failure." Success cannot be achieved without failure. An old story is a good example of this concept: Robert Bruce, King of Scotland, had just been defeated for the 11th time by his enemies, the English. He was dejectedly resting by a tree, ready to give up, when he saw a spider persistently trying to spin a web from one limb to another. After the spider failed to reach its goal 11 times, it finally succeeded on the 12th try. Inspired by this incident, Bruce went forth against his enemy for the 12th time. This time he was victorious, defeating the English at Bannockburn, winning independence for Scotland. To be a successful salesperson, you must be willing to try and perhaps to fail in order to succeed in the end.

PROFESSIONAL DESIGNATIONS

The National Association of REALTORS® and numerous other real estate organizations offer myriad professional designations. Some designations relate to general brokerage, while others are for specialized areas of activity. Earning these designations requires a course of study and, in some cases, an examination. Achieving these designations opens up many opportunities because they are regarded highly by others. The Seniors Real Estate Specialist® designation (SRES) will provide the expertise to meet real estate needs of seniors and help you reach this market.

The Association of Energy and Environment Real Estate Professionals offers the Eco Broker designation for agents dedicated to reducing our carbon footprints and protecting the environment. Dealing with an Eco Broker is becoming an important consideration to many buyers. A designation frequently sought is the Graduate, REALTOR® Institute (GRI). Achieving designations such as the GRI will increase your confidence, as well as your sense of self-worth.

CONTINUING TRAINING

Training is not a one-time program. As a real estate professional, you should constantly be improving your skills and increasing your knowledge. The most successful agents continually strive for improvement throughout their careers.

Seek out available training sessions and group-sponsored seminars applicable to your work. *California Real Estate Magazine*, the magazine of the California Association of REALTORS®; *Real Estate Today*, the magazine published by the National Association of REALTORS®; and *REALTOR® News*, the biweekly newspaper of the National Association of REALTORS®, are examples of excellent publications with articles that will help you succeed. Many offices have back issues of these publications in their libraries. In addition, some local associations of REALTORS® have newsletters or publications that discuss local issues. A great many relevant articles and blogs are available on the internet.

When a new idea or approach is proposed during office training sessions, take notes and try to use that idea or approach as soon as possible. Keep in mind that listening may give you ideas, but a demonstration is even better because it shows how to apply the ideas. Using the ideas yourself makes them yours, and they become part of your personal “sales software” to be retained in your memory bank and taken out when a situation warrants their use.

Besides office training sessions, you may have a training supervisor who will critique your efforts. Pay attention. Take criticism as an opportunity for improvement. Criticism is feedback for improvement, not an indication of failure.

Ask questions of the more successful salespeople in your office. Generally, they will share ideas gladly. Consider building a special relationship with a successful agent in your office. In doing so, you will be developing your own mentor. Someone who is supportive of you who possesses both knowledge and experience can be

a great help during your first few months in real estate. This is especially important in offices where the broker or office manager has limited time to work with you.

You will find that there are more good ideas for prospecting, listing, and selling than one person could possibly use. By trying various ideas, you will find approaches you feel comfortable with, and you will work these with greater enthusiasm and heighten the likelihood of your success.

Check the course offerings of your local colleges and business schools. Besides specific real estate courses, consider more general business courses in salesmanship, marketing, advertising, and so forth. The knowledge gained in many general courses will have direct application to real estate activities. A number of courses also are offered by correspondence. While some correspondence and online courses are quite good, they lack the insights of an instructor and the give and take of a classroom environment. There is a great deal more to learning than just what is “in the book.”

Real estate licensees are required to take continuing education courses for license renewal. Many of these courses will provide you with knowledge directly applicable to your work. Even if you are not required to take a course, you should evaluate what the course can do for you.

Many excellent commercial seminars are available to licensees. Besides providing new ideas and approaches, these seminars are motivational in nature. In making decisions about which courses and seminars to attend, ask your broker and/or successful salespeople you know who have attended the courses for their evaluations of the programs.

Self-Training

In your training, you should realize that the quicker you acquire the basic skills needed for success, the greater the likelihood you will remain in the real estate profession. The simple economics of trying to survive a lengthy training period forces many agents to leave real estate when they might otherwise have realized great success. Stated simply, the quicker you learn your survival skills, the more likely you are to survive and succeed.

Therefore, it is important to use every bit of available time toward this goal of self-improvement. As a new licensee, you cannot afford the luxury of relaxing in front of the television after an eight-hour day.

Check your office library, as well as city libraries, for real estate training books and videos. Study them, take notes, and then verbalize (role-play) the approaches presented. Chances are a number of people in your office have trainer material from various seminar presenters. Borrow it; some of the private presenter material is excellent.

Learn the inventory in your market area. Only with product knowledge will you be able to successfully match prospective buyers to properties meeting their needs.

Learn about the facilities within your market area. You want to be able to answer the questions that prospective buyers are likely to ask about schools, parks, transportation, recreational facilities, and so on.

As a word of caution, keep in mind that some of the poorest producers may have excellent resource material available, but if unused it becomes worthless.

Role-Playing

Role-playing is acting as the person you wish to be.

To communicate effectively with buyers and sellers, you must be able to take your ideas and verbalize them in an effective manner. By using role-playing, you can train yourself to handle telephone inquiries; make listing, showing, and selling presentations; learn to effectively qualify buyers; and learn to overcome both buyer and seller objections. Role-playing can help you overcome the fear that grips many agents when it comes time to ask an owner or a buyer to sign a contract. Role-playing can give you the self-confidence to close (obtain signatures on the contract) in a natural and effective manner.

Role-playing is a mind game. It is also basic acting. In role-playing, you imagine yourself in a situation where you are confronted by unexpected objections of all sorts and then decide on the best way to handle them. (The training material we discussed will provide you with many ideas.) Verbalize your responses before a mirror. Watch your expressions.

Always remember that you are playing the part of a knowledgeable professional. You should constantly strive for improvement. The beauty of role-playing is that you can do it mentally, even when others are present. You can use otherwise non-productive driving time for role-playing exercises. By role-playing, you will gain confidence and become at ease in dealing with people. An excellent training approach is to role-play with another person with whom you can exchange characters. This really is a team-teaching exercise. Having a third-party observer will increase the effectiveness of this technique and will help keep you focused.

By recording your role-playing presentations, you will hear how you sound. You might feel you need better enunciation or need to speak with greater confidence. Annoying verbal habits become evident, such as verbalizing your pauses with “ahhh” or repeating a phrase such as “you know.” If you realize you have problems, you can work to overcome them. Making presentations before a video camera can reveal problems with facial expressions and body language.

After you make any type of presentation, ask yourself, “Could I have handled the situation better?” By thinking about what you should have said, you are actually preparing yourself for future encounters with similar situations. You can thus benefit by failures as well as successes.

Role-playing will improve your communication skills, and as your skills improve, so will your confidence. You will thus overcome fear, a significant factor in the failure of many salespeople. If you fear failure, you are likely to betray your fear by appearing nervous. A prospective buyer or seller is not likely to become convinced to buy or list property by an agent who appears to lack confidence. As you progress, you will become the person you were portraying in your role-playing: a confident, knowledgeable, and caring person interested in fulfilling the needs of others.

Planning

Planning is the process of plotting your course of action to reach specified goals and objectives. It is a blueprint of what you intend to accomplish. Add a timetable, and you also have a tool to evaluate your performance. Planning is never a waste of time. The less time you have to spare, the more important it is to plan your day carefully. Do not forget the oft-repeated statement that 20% of your effort will produce 80% of your results.

Adopt your own system of planning, but be sure to plan. Any system that does away with time-wasters and puts the focus on planning will increase productivity. Self-discipline is the key. If you have it, you will have great success with time management and the other aspects of your life.

Sometimes it may seem that no matter how hard you apply yourself and how efficiently you allocate your time, you have more work to do and more people to see than you can handle satisfactorily. Time management is part of the solution. A good time-management system rounds out your plan and helps you improve efficiency and income. As you refine your techniques of self-management, you may expect a release from the pressures of time as your first dividend.

Time Management

Time is a valuable commodity, but you work for free until a transaction can be closed. Time must be managed for success.

The paradox of time is that “there is never enough, but we have all there is.” A time-management authority who conducted a poll of managers found that 90% said they needed more time to get their jobs done right.

Unsuccessful real estate licensees often waste 40% to 50% of every workday. Just think of your first hour on the job. Are you guilty of the behavior that one time-management expert witnessed? Do you do nothing more than participate in “opening exercises”: have a cup of coffee, socialize, read the paper? Little gets done, and that sets a pattern for the day. There’s an old proverb that reads as follows: “As the first hour goes, so goes the day.”

Time management can make the whole day more productive, allowing you to produce more, get better results, and probably get more rewards as well. Remember, time is capital; know what it is worth.

$$\frac{\text{desired annual earnings}}{1,952 \text{ working hours a year}}$$

The figure of 1,952 is based on 244 working days times 8 hours per day.

EXAMPLE Salesperson Graham makes \$100,000 per year; his hourly wage is approximately \$51 per hour ($\$100,000 \div 1,952 \text{ hours} = \51 , the dollar value of one hour).

Allowing for other activities and unavoidable delays, you will be fortunate to have one-fourth that time (488 hours a year) to actually spend with clients or customers. Thus, the dollar value of your time is even greater than the equation above indicates. To start thinking about how to get the maximum return on your time, ask yourself, “How can I raise the

- number of contacts received and made per week?”
- number of interviews per contact?”
- number of presentations given per interview?”
- number of closes per presentation?”
- number of new prospects per week?”
- number of repeat sales?”
- dollar value of selling time?”

Goal Setting

Can you imagine yourself in a race without a finish line? That is what it is like to work without goals. You can travel a great distance but get nowhere.

Goal setting is a tool for making intelligent decisions. Use the following seven principles to help you set your goals effectively:

1. Goals in real estate selling should be specific rather than abstract. For example:
 - Abstract—I will do my best to improve my sales techniques during this week.
 - Specific—I will obtain at least one listing and make at least three sales presentations during this week.

Goals must be measurable. “Doing better” cannot be measured, but giving out 50 calling cards is a measurable goal. If a goal is not measurable, it is not likely to be met.

2. Goals should be in a time frame. Set short-term, intermediate-term, and long-term goals. (The short-term, intermediate-term, and long-term goals listed below are representative only. Goals will vary based on your area of specialization and your geographic area, as well as your individual needs.) For example:

Short-term (less than one year)

- I will obtain a minimum of three listings this month.
- This week I will enroll in a college-level course in property management.

Intermediate-term (one to five years)

- I will complete the required eight broker courses within two years.
- I will obtain the GRI designation within four years.

Long-term (more than five years)

- I will open my own real estate office within eight years.
- (Your short-term and intermediate-term goals should flow toward meeting your long-term goals.)

3. Goals should be put into writing:
 - It is easier to determine your priorities when your goals are written.
 - Written goals are easier to examine and revise.

Translating goals onto paper makes them appear more manageable and helps licensees overcome selling fears.

Tell someone, such as your spouse or trusted friend, your goals. Telling another person will serve as motivation to continue striving for your goals. You are now accountable to someone besides yourself.

4. Goals should be reasonably attainable. If your goals are not realistic, you are likely to become discouraged and disappointed.
5. Goals should be adopted only after careful and considerable thought.

Think about what you really want and why. Reaching goals can take hard work, so you probably will devote time and energy only to those you are really committed to.

6. Goals should not be cast in stone. If interests change, the economy changes, or your needs and desires change, your long-term and intermediate-term goals should change accordingly. If you are no longer motivated to reach a goal, your likelihood of accomplishing that goal will be significantly lessened.

You need action steps to meet goals. In other words, a plan so the goal will be met. As an example, the goal to obtain three listings this month might have the following action plan:

- I will make personal owner contact each week with all for-sale-by-owner ads that include addresses.
- I will check local bulletin boards and Craigslist each week for for-sale-by-owner ads.
- I will mail solicitation material each week to all expired listings.
- I will check the local legal paper for legal notices that could indicate listing opportunities and follow up with personal contacts.

By evaluating yourself, you will discover that wishes can become reality if you have a plan that leads toward their fruition.

Your **daily planning** is the foundation of your goal setting. Your planning for each day should include steps leading to your short-term, intermediate-term, and long-term goals.

Before you start daily planning, precisely log your time for several days. How productive was that 20-minute discussion on the Dodgers? Besides identifying the time-wasters, ask yourself, “Were my efforts devoted more to probabilities rather than mere possibilities?”

Some agents like to divide their activities into A, B, C, and D categories:

Simply increasing “A” Time will increase productivity.

“A” Time—Time spent making listing presentations and showing properties for sale. This is time spent that can lead directly to a commission.

“B” Time—Time spent in prospecting for buyers and sellers and in preparing for showings

“C” Time—Caravanning, studying inventory, and doing necessary tasks and paperwork in support of “A” Time and “B” Time activities

“D” Time—Time spent for personal and non-work-related activities

This simple rating of time presents a basic truth. If you can double your “A” Time, you will double your income, even without any improvement in your skills. When coupled with skill improvement, you can readily see how incomes can soar. Some successful agents hire assistants to take care of a great deal of their “B” Time and “C” Time activities. You can see why a productive salesperson would want to do this.

You are now ready for your daily plan. There are quite a few real estate daily planners available. Consider one for your smartphone and/or computer. While Figure 1.5 shows a basic daily planning sheet, you will likely use a planner on your smartphone. By having your planner with you on your smartphone, you can set appointments several days in advance when necessary. A smartphone not only provides planning ability, it also provides much of the information needed to fulfill the tasks in your daily plan.

FIGURE 1.5: Daily Planning Sheet

Friday, June 10, 2016

9AM		
10:00		
11:00		
12PM		
1:00		
2:00		
3:00		
4:00		
5:00		
6:00		
7:00		
8:00		
9PM		

Notes:

Source: Jim Loonday, *List for Success: How Real Estate Professionals Make Big Money* (Chicago: Real Estate Education Company®, 1986), 10.

Just having a planner isn't enough—you must use it. Keep in mind that every activity on your daily plan will not be accomplished. Your schedule will change because of unplanned opportunities. Grab an “A” Time opportunity whenever it comes your way.

At the end of each day, evaluate what you have accomplished. If a task was not accomplished but is still relevant, set it forward to the next day; if not, delete it. If a task is unpleasant but must be done, set it for the beginning of a day. After it is accomplished, you will have a sense of relief rather than worrying about it all day.

If you have a goal to earn \$100,000 in one year, you would want to know how many sale and listing transactions would have to be closed to meet that goal. Assume that in your office, the average salesperson's commission per transaction is \$5,850. In order to earn \$100,000, you would have to close 17.1 transactions per year or 1.42 per month ($\$100,000 \div \$5,850$). Now you must determine the A, B, C, and D time allocations needed to meet this income goal.

Assistants

Some new licensees will work as salaried **personal assistants** to successful sales agents to gain the experience and confidence necessary for success in sales. While having assistants does not make much economic sense for new agents (who must learn before they can train others to help them), they can handle a great deal of a successful agent's B, C, and D time activities, thus allowing for greater “A” Time work. Hundreds of agents in California hire paid full-time or part-time assistants, and one agent we know has a personal staff of four full-time aides. Assistants can be licensed or unlicensed. (See Figure 1.6.)

FIGURE 1.6: Personal Assistant Employment Agreement (Unlicensed Administrative Assistant)

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<p>ASSISTANT EMPLOYMENT AGREEMENT</p> <p>Unlicensed Administrative Assistant</p>

NOTE: This form is used by an employing broker when entering into an agreement hiring an unlicensed administrative assistant for the broker or a licensee employed the broker, to set forth the assistant's activities and compensation and establish the supervisory role of the broker and the licensee.

DATE: _____, 20____, at _____, California.
Items left blank or unchecked are not applicable.

FACTS:

1. _____, as the Broker,
 hereby employs _____, as the Assistant,
 to perform nondiscretionary administrative duties on behalf of ☐ Broker, or ☐ Licensee _____,
 until terminated by Broker.

1.1 Assistant is an employee subject to income tax withholding and unemployment insurance coverage.

AGREEMENT:

2. ASSISTANT AGREES TO:

- 2.1 Comply with office policies established by Broker.
- 2.2 Diligently perform duties assigned by the Broker or Licensee.
- 2.3 Assist in the implementation of Licensee's activities in the course and scope of Licensee's employment with Broker. [See RPI Form 505 and 506]
- 2.4 Schedule appointments for Broker or Licensee to meet with clients and others as requested by Broker or Licensee.
- 2.5 Prepare documents and design advertising, brochures and fliers as instructed by Broker or Licensee.
- 2.6 Arrange for or deliver or pick-up reports, informational statements and documents related to Broker's or Licensee's transactions.
- 2.7 Arrange for and give third-party service providers access to properties in Licensee's transactions.
- 2.8 Perform administrative activities while assisting at an open house, such as greeting the public, providing pre-printed facts sheets, arranging appointments and greeting the public.
- 2.9 Participate in any educational programs or meetings when advised by Broker or Licensee.
- 2.10 Furnish their own transportation and carry a liability and property damage insurance policy in an amount satisfactory to Broker with a policy rider naming Broker as a co-insured.
- 2.11 ☐ Solicit prospective buyers, owners, borrowers, or tenants for referral to Broker's services as an unlicensed finder. [See RPI Form 115]
- 2.12 Enter into no agreement obligating Broker or Licensee without Broker's or Licensee's prior instructions.
- 2.13 Divulge to no one the business or names of clientele, lists or descriptions of forms, trade secrets or business practices of Broker or Licensee during or after the term of this agreement.
- 2.14 Engage in no activity that requires a real estate license.
- 2.15 Other _____

3. LICENSEE AGREES TO:

- 3.1 Oversee and supervise all activities of Assistant to ensure compliance with Broker's office policy and that Assistant is not conducting any licensed activity.
- 3.2 Maintain a real estate license in the State of California.

4. BROKER AGREES TO:

- 4.1 Maintain a license as a real estate broker in the State of California.
- 4.2 Maintain an office with proper facilities to operate a real estate brokerage business.
- 4.3 Provide worker's compensation insurance for Assistant.
- 4.4 Maintain the following insurance coverage for Assistant:
☐ Health ☐ Dental ☐ Life ☐ _____

FIGURE 1.6: Personal Assistant Employment Agreement (Unlicensed Administrative Assistant) (continued)

----- PAGE 2 OF 2 — FORM 507 -----

4.5 Withhold from the Assistant's compensation all appropriate state and federal income taxes, state disability insurance, and social security taxes.

4.6 Other _____

5. COMPENSATION:

5.1 Assistant to be compensated by Broker as follows:

a. ☐ \$ _____ per hour bi-weekly in equal installments on every other _____.

b. ☐ \$ _____ per hour semi-monthly on _____ and _____.

c. ☐ _____ . [See RPI Form 250]

5.2 Assistant to be reimbursed for reasonable business expenses incurred while fulfilling the duties of this employment.

5.3 ☐ Broker, or ☐ Licensee to keep record of Assistant's work hours.

6. GENERAL PROVISIONS:

6.1 Any dispute between Assistant, Broker or Licensee that cannot be settled by Broker, or resolved by the State Labor Commission or by non-binding mediation, will be arbitrated under the rules of the American Arbitration Association.

6.2 _____

6.3 ☐ See addendum for additional provisions. [See RPI Form 250]

I agree to render services on the terms stated above.

Date: _____, 20____ Address: _____

Assistant's Name: _____

Agent's Name: _____ Phone: _____ Cell: _____

Email: _____

Signature: _____

I agree to employ Assistant on the terms stated above.

Date: _____, 20____

Broker's Name: _____ Licensee's Name: _____

CalBRE #: _____ CalBRE #: _____

Signature: _____ Address: _____

Address: _____

Phone: _____ Cell: _____

Cell: _____

Email: _____ Email: _____

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According to the National Association of REALTORS®, 16% of REALTORS® have at least one assistant. While some agents share an assistant, 79% of assistants work for a single agent. Fifty-four percent of personal assistants work part time. Although 48% of assistants are unlicensed, unlicensed assistants are limited in their activities. Some of the activities that might be delegated to unlicensed assistants include the following:

- Cold canvassing to find interest in using services of a real estate broker, assistant can set up appointments but cannot try to induce use of the broker
- Installing signs and lockboxes
- Returning calls and handling correspondence and emails
- Preparing disclosures and documents under supervision of broker
- Delivering documents and obtaining signatures
- Conducting or assisting in open houses with the consent of the principal, providing factual information, handing out material, discussing sale terms, and discussing features of the home
- Accepting, accounting for, and providing receipts for trust funds received
- Financial qualifying of prospective buyers
- Tracking escrows
- Preparing internet listings and updates
- Answering emails within minutes and setting up appointments with prospect
- Preparing property flyers
- Preparing advertising to be approved by broker prior to publication
- Locating property to show
- Contacting owners as to showings
- Gathering data for a comparative price analysis
- Managing agent's daily planner
- Handling agent's social media
- Communicating with principal or service provider as to pertinent information

Unlicensed assistants are prohibited from the following activities:

- Attempting to induce a person to use broker services (prohibits communication with the public in a manner structured for solicitation purposes)
- Showing property, including open houses (simply handing out material is alright)
- Discussing features of a property, unless taken from a data sheet prepared by a licensee
- Discussing terms and conditions regarding a listing or sale

- Discussing property needs with a client
- Discussing contracts or significance of documents with a client
- Participating in any negotiations

WEB LINK

The Department of Real Estate published guidelines for unlicensed assistants, setting forth what an unlicensed assistant could and could not do; the *Guidelines for Unlicensed Assistants* was published in *Real Estate Bulletin*, Winter 2003, and can be accessed online at www.dre.ca.gov/files/pdf/guide_unlic_asst.pdf.

ADDITIONAL PREPARATION

Additional preparation will be required to prepare for your career.

When you go to work for an office, you will want to learn about the office **inventory** as soon as possible. This means you must visit office listings. Call ahead if a listing is inhabited. Don't take too much time with each owner, or you will have a long-term job just visiting inventory. In the case of large offices with hundreds of listings, personal visits to each listing would not be possible. As a suggestion, use your office website to review listings and then visit those listings that are in the area, price range, and of the type you feel you would like to concentrate on. You may wish to take digital photographs of features of the property, if they are not covered by your office website or property flyers. Take notes so you don't confuse property features. Until you know the inventory, you will be unable to field inquiries or properly prepare for a showing.

Another benefit of visiting office inventory is that it will give you a sense of area value based on listing prices. You should be able to judge within a relatively short period of time if a listing is priced competitively. Check out homes listed by other offices within the geographic area or specialization area if you have decided to specialize in a particular market segment. In smaller communities, you might be able to see everything that is available, but in larger markets, you will have to be selective and choose homes for which you feel you might have interested buyers.

Of course, you should go on office and board **caravans** of new listings. *Caravan* refers to a method where real estate agents tour a property or series of properties listed for sale. The name comes from the line of cars that travel from one listing to another. Avoid visiting properties where you feel the likelihood of your having a buyer is slight. Try to avoid wasting time. Abraham Lincoln said, "A lawyer's time is his stock in trade." It holds true for real estate agents as well as lawyers.

Office Procedure

If your office or company has a **policy manual** (procedures manual), study it. As soon as possible, learn what is expected of you. Know your office meeting and training schedules, and enter them in your daily planner for the month ahead. Find out what the procedure is for depositing customer trust money. You must know what to do when you take a listing or an offer to purchase. Every office is run a little differently from every other office, so be certain you understand what is expected of you.

Be familiar with the forms used by your office so that you will be able to complete them and explain them to others without hesitation. As a personal training exercise, complete a listing for a property you know of, and then complete an offer to purchase for that property. Have both reviewed by another agent.

Find out how to use your office communications systems. What are the procedures for long distance calls and overnight express services? Understand what systems your office provides and how to use them. This includes computer applications.

Computer Literacy

A 2020 National Association of REALTORS® (NAR) report stated that for the first step in finding a home,

- 56% checked online for properties or home buyer information,
- 16% contacted a broker,
- 7% contacted a lender,
- 6% sought advice from friends or relatives,
- 6% drove by homes, and
- 4% visited open houses.

According to the National Association of REALTORS®, more than 90% of real estate firms have websites.

Ad Week (April 20, 2018) indicated that 69% of real estate agents use Facebook.

In today's sales environment, it is readily apparent that you must have computer knowledge. At a minimum, you should be able to use a computer for the following:

- Sending and accessing emails and tweets
- Searching for available properties from MLS data based on specific criteria (for example: four-bedroom houses in a particular area priced under \$600,000)
- Obtaining a printout of houses sold within an area showing features and sale price
- Knowing your office and MLS website and links
- Accessing additional websites covering your market area
- Preparing a listing for website use
- Using word-processing software to produce personalized sales letters and other correspondence
- Producing an attractive property brief (one-page description) for a listing
- Obtaining comparables (listing and sale prices of similar properties) and preparing a comparative market analysis
- Handling loan-qualifying and loan applications online
- Working with social media

You should consider **e-PRO certification**. This is the NAR training program to certify real estate professionals as internet professionals. The educational requirements for certification will prepare you for more effective online communications.

Tax Knowledge

You must understand real property taxation and special benefits available for seniors, low-income individuals, and so on. You should also have knowledge of the income tax benefits of home ownership, as well as the tax treatment for investment and income property, including exchanging. (See Unit 14.) Tax knowledge is also important for tracking your own expenses for income tax preparation. What you can deduct will significantly affect your net income. Unless you are an attorney or accountant, refrain from providing tax advice. This will help you avoid personal liability.

Sales Equipment

You must be equipped to be a successful real estate salesperson. You should consider the following:

iPad or other tablet device. Many real estate agents are relying on iPads or other tablet devices, such as those that run on the Android operating system, to conduct their real estate sales business. Most MLS interfaces are optimized to display on tablet devices. Other agents are using their tablets to generate and sign contracts through applications designed for this purpose.

Wireless printers. Wireless printers are available starting at about \$100. The printers can be mounted in your vehicle and used in conjunction with your netbook or laptop to print out information on properties as well as contracts. With a wireless printer, you can turn your vehicle into a mobile office.

Smartphone. Most active real estate agents now use smartphones. They do so to increase agent efficiency. Consider a smartphone such as an Apple iPhone with the following features and real estate apps:

- All phone services, including caller ID, call waiting, and recording
- Email
- Access to available inventory
- Access to social media
- Daily planning
- Storing of addresses and telephone numbers
- Managing contacts for return calls, action, et cetera.
- Making to-do lists
- Taking notes
- Writing memos
- Signing documents (DocuSign/Rightsign)

- Amortization schedule
- Doing financial calculations (closing costs, payments, etc.)
- Downloading MLS information and other data from the internet
- Available For Sale by Owner properties
- Zillow value estimates
- Transferring data to and from computers
- Setting an alarm for appointment reminders
- Entering business-related expenses for tax purposes
- Accessing a global positioning system (GPS) for driving instructions to addresses from your location; Waze is a community-based traffic navigation system that saves both time and gas.
- Open House Pro is an open house management system that helps follow up leads on walk-ins
- Dropbox is a free service that allows you to bring photos, documents, and videos anywhere. Any file you place in Dropbox is accessible.
- Camera
- Customizing for specific needs
- Security. Red Alert is a security app that can contact 911 if you are in danger; it also features a built-in alarm.

A smartphone with real estate apps gives the agent information on local listings and area information. The NAR has apps that will show sold homes on map zones, price-reduced properties, and foreclosed properties, as well as customized searches. In California, you cannot use a hand-held cell phone while driving.

Using a search engine, you will find App stores that offer a variety of apps, with many designed for real estate agents.

Business cards. If you are fluent in another language or languages and are targeting persons who speak that language, then your business card should indicate your language fluency. Your name must appear as it is on your real estate license. A nickname may be highlighted to indicate it is not the salesperson's legal name. The name of your employing broker must be in at least eight-point type. Your photo on your card will help contacts identify you. A fold-out card might be required to provide all pertinent data.

Some brokers do not want photos used on business cards because of agent safety. Brokers feel that "glamour photos" might cause contacts with the agent other than real property-related business. Other brokers fear the photos could encourage racial or ethnic discrimination. You should be aware of these concerns. However, the author believes tasteful business card photos are proper, as well as being a positive business practice.

Electronic business cards are available. While they may look like ordinary cards, when they are inserted into a computer, they can provide videos, resumes, and links to social networking, as well as your office site.

A QR code (quick response code) is a bar code readable by smartphones. One phone scans the other for data transfer. Use of a QR code can mean a paperless electronic card.

Your car. Your car should be kept clean at all times. Avoid smoking in your car because many people are offended by the smell of tobacco. You might want to use an air freshener. If you are going to purchase a car, consider a full-size four-door model or SUV for ease in entering and exiting. This is of particular value when dealing with older prospective buyers. To test for comfort, sit in the rear seat of the vehicle before you decide to purchase.

Carry the following items in the trunk, glove box, or under the seat:

1. A plastic bag with extra forms and pens
2. A flashlight
3. A For Sale sign and stake. Large For Sale signs erected on heavy posts are generally installed by a crew hired by the broker. Many offices install small signs until the large sign can be erected. In addition, some communities limit the size of For Sale signs, so smaller signs must be used.
4. Basic tools (hammer, screwdriver, pliers, assorted nails, screws, nuts, and bolts) for setting or repairing firm signs
5. A 50-foot tape measure (and/or an electronic measuring device)
6. A supply of business cards
7. Maps showing school districts, public transportation, recreational areas, et cetera.
8. A battery-charging pack for your smartphone.

Computer. As you gain experience and knowledge, you will find that you will be spending more time away from your office. Your office will become more of a place to meet clients than a workstation. Your own computer is a necessity. A computer offers the benefit of a larger monitor than a smartphone's screen. Your home office should also include a printer, scanner, fax, and copier (now available as 4-in-1 machines). Having a home office will reduce wasted time and allow you to utilize spare time at home. You can track contact information and activities with contact management software. You can even set alarms for contacts.

Note: You should be aware that a home office may qualify as an IRS tax deduction if the space is used exclusively and regularly as your principal place of business. You should check with your accountant to determine if your home office expenses qualify as tax deductions.

WEB LINK



Specialty items. There are a number of sources for real estate signs, flags, cards, newsletters and give-away advertising items. Many boards of REALTORS® have stores. In addition there are a number of providers on the internet such as www.sanzospecialties.com.

You. You want to dress as a professional within your area would dress. Your clothes reflect the image you want to convey, that of a person who feels competent in her role. Avoid trendy fashions; conservative is best. Avoid overly flashy or expensive jewelry; you don't want to divert attention from what you are saying. Use cologne or aftershave lotion sparingly. If people can smell you coming, chances are you overdid it.

Learn to smile. Smile while you are on the telephone and when you talk to people. An upbeat person can make others feel good and can set an upbeat mood for a sale.

Take care of yourself. Your body is the only one you have. Watch your diet, get adequate sleep, and exercise on a regular basis. A healthy body will be reflected in your energy and productivity.

Recordkeeping. Keep records of all written communications and notes of any problems. Do not make verbal promises. Follow up communications with an email. Contemporaneous dated notes are important. Records can be kept electronically. Many of the problems you will encounter are based on misunderstanding later about what was communicated. Good records can avoid legal disputes and serve to reinforce your position if disputes do occur. The Department of Real Estate requires that all records relating to real estate transactions be kept for a minimum of three years.

SUMMARY

Real estate professionals deal in the fulfillment of needs. The product that fulfills these needs is real estate.

Real estate activity can be an important engine for economic growth because more people are employed in real estate and construction-related jobs than in any other industry.

Competition has changed the way many brokers charge for their services.

Real estate professionals work in an imperfect and changing marketplace. The reasons for this imperfection include product differentiation, emotions, imperfect buyer and seller knowledge, buyer and seller motivation, and the differing terms of the sale. The real estate professional brings a degree of order to this marketplace.

Real estate is changing with new technology, as well as with better-educated and trained professionals. Changes are also taking place because of competition.

Most real estate agents are engaged in listing and selling single-family residences. Other areas of activity or specialization include the following:

- Mobile home sales
- Residential income property
- Commercial property
- Industrial property
- Business opportunities
- Land and farm brokerage
- Lot sales
- Auction sales
- Loan brokerage
- Land development
- Property management
- Leasing

The real estate salesperson is considered by real estate law to be an employee of the broker but for tax purposes usually is contractually designated as an independent contractor.

If the salesperson meets the IRS criteria as an independent contractor, withholding tax is not deducted from the salesperson's commission checks. Also, the employer need not contribute to the salesperson's Social Security.

Choosing a broker is an extremely important decision. A new licensee should be particularly interested in the aid and training provided by the broker. Brokers want to hire salespersons who will succeed, and salespersons want a broker who can meet their needs.

Your attitude can be a significant factor in your success. A negative attitude will be reflected in your production.

Working for a REALTOR® or a Realtist will give you the advantage of a broad educational program, as well as access to publications. Keep in mind that training is a career-long activity and is an integral part of your career as a real estate professional. You must equip yourself with the basic tools of the real estate profession and know how to use them. Besides office training and boards of REALTORS® sessions, engage in self-training. This includes reading books and periodicals, using available videos, and, most important, role-playing to prepare yourself to handle any conceivable situation.

Establish goals for yourself. These should include short-term, intermediate-term, and long-term goals. You need a plan to meet these goals. Your planning will reduce wasted time and lead to realization of your goals. The basic building block of your planning is a daily plan.

One of your first steps toward success in a new office is learning your inventory. You must learn office procedures, acquire basic computer literacy, and have basic knowledge of property and income taxes as they relate to real estate sales activities. You must also acquire some basic tools so you can perform as a real estate professional. Keep records of what was communicated and when. Good records can avoid problems.

Understand how social media works and the major apps available.

Of course, you want to personally convey the image of a professional in your dress and manner. Take care of yourself because your health is related to your productivity.

CLASS DISCUSSION TOPICS

1. Describe your local market area and evaluate it. Is your local market stratified? How? If you were to choose an area of specialization, what would it be? (Consider both geographic area and activity.) Justify your choice.
2. Describe the training programs provided by local offices.
3. What are your long-term goals? What short-term and intermediate-term goals would help in meeting these long-term goals?
4. What training material is available for your use in your office?
5. What training material and course offerings are available through your board or association of REALTORS®?
6. Prepare a daily plan in advance. How was your time actually spent on that day? Discuss deviations from the plan and the reasons for the deviations. Were they justified?
7. Evaluate your average day. What percentage of your time is spent in “A” Time activities? “B” Time activities? “C” Time activities? “D” Time activities?
8. What could you do now to increase the percentage of your time spent on “A” Time activities?
9. Do you know of any real estate firms in your area that have merged? If so, what benefits do you feel resulted from the merger?
10. Are there brokers in your area offering lower fees than their competition?
11. Are they providing similar services to those offered by their higher priced competitors?
12. Discuss what you consider to be a successful team. How are team members compensated? What are the benefits of team members?
13. For class discussion, bring to class one current-events article dealing with some aspect of real estate practice.

UNIT QUIZ

1. The real estate marketplace could *BEST* be described as being
 - a. homogeneous.
 - b. stratified.
 - c. perfect.
 - d. uninfluenced by emotion.
2. *MOST* real estate agents are primarily engaged in which area of activity?
 - a. Residential property
 - b. Raw land and lots
 - c. Commercial property
 - d. Development
3. The IRS will treat real estate salespeople as independent contractors if three criteria are met. Which is *NOT* one of the criteria?
 - a. The salesperson's reimbursement is solely based on sales, not hours worked.
 - b. The salesperson represents himself as an independent contractor when dealing with third parties.
 - c. There is a written contract stating that the salesperson will be treated as an independent contractor for tax purposes.
 - d. The salesperson is licensed as a real estate agent.
4. A broker ordinarily would be liable to salespeople for
 - a. unemployment compensation.
 - b. workers' compensation.
 - c. Social Security contributions.
 - d. none of these.
5. In choosing a broker, a new licensee should be *LEAST* interested in an office that
 - a. has a high percentage of successful salespeople.
 - b. has a good library of books, tapes, and videos for training.
 - c. offers 100% commission.
 - d. is a member of a local multiple listing service.
6. The *BEST* way to learn is to
 - a. listen to what others say.
 - b. read instructional material.
 - c. watch what others are doing.
 - d. use the ideas you observe or read about.
7. Which of the following statements regarding role-playing is *TRUE*?
 - a. Role-playing situations are limited only by our own imagination.
 - b. Role-playing can be verbalized or nonverbalized.
 - c. Role-playing exercises can involve more than one person.
 - d. All of these.

8. Which statement is an example of a specific goal?
 - a. I will work harder next week.
 - b. I will improve my listing presentation.
 - c. I will make a call tomorrow on a for-sale-by-owner sign and schedule three property showings by Sunday.
 - d. I will learn by observing successful agents.
9. All of the following will aid you in goal achievement *EXCEPT*
 - a. that goals should be attainable.
 - b. that goals should be based on what you really want.
 - c. that goals should be kept to yourself because they are personal.
 - d. that goals should be exact so that you can measure their attainment.
10. Proper daily planning means that you should endeavor to
 - a. reduce “D” Time activities.
 - b. increase “A” Time activities.
 - c. place more emphasis on probabilities than on possibilities.
 - d. accomplish all of these.

2

UNIT TWO



ETHICS, FAIR HOUSING, TRUST FUNDS, AND OTHER LEGAL ISSUES

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- define ethics and explain how to evaluate an act as ethical or unethical;
- understand federal and state fair housing laws and regulations and how they relate to real estate practice;
- explain the antitrust provision of the Sherman Antitrust Act and the applicability of the act to real estate practice; and
- understand real estate professionals' responsibility regarding sexual harassment and the handling of trust funds.

KEY TERMS

Americans with Disabilities Act	conversion	price-fixing
blockbusting	diversity training	readily achievable
California Omnibus Housing Nondiscrimination Act	Dred Scott decision	REALTORS® Code of Ethics
Cartwright Act	ethics	redlining
Civil Rights Act of 1866	Fair Employment and Housing Act	Rumford Act
Civil Rights Act of 1870	familial status	sexual harassment
Civil Rights Act of 1964	Golden Rule	Sherman Antitrust Act
Civil Rights Act of 1968	group boycotting laws	steering
commingling	<i>Jones v. Mayer</i>	tie-in agreements
	market allocation	trust funds
	place of public accommodation	Unruh Act

WHAT IS ETHICS?

The word **ethics** comes from the Greek *ethikos*, meaning *moral*, and *ethos*, meaning *character*. Ethics is a moral standard for life, and the test for that standard is quite simple. It is the **Golden Rule**: “Do unto others as you would have them do unto you.” To evaluate conduct to determine whether it is ethical, simply ask yourself, “If the roles were reversed, would I consider the conduct I am contemplating to be proper?”

While no person is perfect, real estate professionals should strive for fair and honest dealings with all parties. If they do so, they will be acting in an ethical manner.

Ethics and the Law

The best test of ethics is the Golden Rule.

You should do right not because of a fear of punishment or exposure but because the reward is the conduct itself. George Bernard Shaw stated, “You cannot believe in honor until you have achieved it.” Similarly, you cannot truly understand why you should be a moral person until you become such a person.

The fact that everyone is doing an unethical act does not make it right. Nor does the fact that if you didn’t do it someone else would.

Ethics has nothing to do with legality or illegality. **Laws** set minimum standards for what a society regards as acceptable behavior. Violation of the law is an illegal act for which the state has set penalties. Laws can change: what is illegal today could be legal tomorrow, and what is legal today could be illegal tomorrow. Similarly, a legal act could be unethical, and an illegal act could be ethical. As an example, adultery may be legal because it may not violate the law, but being unfaithful to a spouse would be considered unethical behavior because it does not pass the test of the Golden Rule. Similarly, failing to have a current dog license would violate the law, but it would not be unethical behavior based on the Golden Rule.

Ethics deals in what is right, not in minimum standards. While laws change to accommodate current attitudes, ethics remains constant. If conduct is wrong,

Ethics goes beyond the law.

based on the application of the Golden Rule, it remains wrong, even though others may engage in such conduct.

Ethics tends to precede the law. For instance, in the early 1980s, there was a rash of home purchases with loans being assumed and sellers carrying the balance of the purchase price using a second trust deed. Some no-down-payment purchasers would rent the homes, pocket the rent receipts, and then not make payments on either the first or second trust deed, a practice called *rent skimming*. Some purchasers were able to delay foreclosure for more than a year.

Though this practice was not at the time a violation of the law, if you apply the Golden Rule to this conduct, it is reprehensible and, of course, unethical. Statutes were later enacted that made rent skimming illegal.

Gray Ethical Areas

Ethics is not an exact science. What is ethical or unethical is not always clear. Our sense of right and wrong is based on our experiences. If in your heart you believe an action is proper, then it is ethical to you. However, if you have to ask someone if an action is legal, then you clearly feel there is something questionable in the action.

If you would not want others to know what you have done, then it is also clear that you feel the action is tainted. Or if you feel you have to justify an action with a defense such as “If I didn’t do it, someone else would,” it is clear that you know the action is wrong. Shakespeare said it best over 400 years ago: “To thine own self be true, and it must follow, as the night the day, thou canst not then be false to any man.”

Ethics and Motive

Your motive for an action could determine whether the action is ethical or unethical. For example, while on a caravan visiting new listings, you notice several building code violations in one of the properties and you notify the county authorities of the violations. If you did so because you felt the violations presented a real danger to present occupants and any future buyers, then your action would have to be viewed as ethical. But if safety was not a concern, and you reported the violations solely because of animosity toward the listing agent, then your action would clearly be viewed as unethical because you were intentionally trying to hurt another without any redeeming reason.

Ethics and Your Career

Ethics is not incompatible with good business practices. Successfully meeting the needs of buyers and sellers will reinforce your self-esteem and serve as a motivator for further success. Over the long haul, an ethical professional will be rewarded with a loyal clientele and a steady stream of referrals. Most successful real estate salespeople obtain a significant portion of their business from referrals from people

with whom they have worked in the past. If you want long-term success, you must earn the trust of others. From a pragmatic viewpoint, good ethics is good business.

Do not fall into the trap of measuring your success by dollars earned rather than by how you have successfully helped others. If you measure success solely in dollars, it becomes easy to take a pragmatic approach to real estate. You can lead yourself to believe that because the end—dollars—is important, the means to reach it are of less importance. You could find yourself acting in a self-serving manner, placing your own interests above the best interests of those you are serving. In short, it can be easy to become an unethical real estate salesperson or broker. Unfortunately, some real estate agents take a pragmatic approach based on “What will it do for me *now*?” Many real estate license revocations have been the result of this “me” attitude.

CODES OF ETHICS

REALTORS®

A number of professional organizations have codes of ethics. The **REALTORS® Code of Ethics** is based on the Golden Rule and is an excellent guide to ethical behavior. The word *REALTOR*® denotes a member of the National Association of REALTORS® (NAR). But even if you are not a member of the NAR, you should read this code and use it as a guide in your relations with others.

Realtists

At one time, African Americans were excluded from just about every professional business group. In 1947, a group of African American brokers founded the National Association of Real Estate Brokers (NAREB) and adopted the word *Realtist* to designate their members. NAREB, like the NAR, is constantly striving to increase the professionalism of the real estate industry. NAREB has a Code of Professional Responsibility and can be accessed online at <https://www.nareb.com/nareb-code-of-professional-responsibility/>. Many Realtists are also REALTORS®.

WEB LINK



California Code of Ethics

In 1979, former Real Estate Commissioner David Fox expressed a need for a California Code of Ethics. This code was known as the *Commissioner's Code of Ethics*. Because it was a repetition of conduct made illegal by other sections of the law, it was repealed in 1996. While illegal conduct is generally unethical, this code failed to carry ethics beyond the law. Legality or illegality of an act does not make it ethical or unethical. The real estate commissioner has, however, adopted the National Association of REALTORS® Code of Ethics.

The real estate commissioner has issued suggestions for professional conduct in sale, lease, and exchange transactions and suggestions for professional conduct when negotiating or arranging loans secured by real property or the sale of a promissory note secured by real property. These comprise Figure 2.1.

FIGURE 2.1: Suggestions for Professional Conduct

The Real Estate Commissioner has issued “Suggestions for Professional Conduct in Sale, Lease, and Exchange Transactions” and “Suggestions for Professional Conduct When Negotiating or Arranging Loans Secured by Real Property or Sale of a Promissory Note Secured by Real Property.”

The purpose of the Suggestions is to encourage real estate licensees to maintain a high level of ethics and professionalism in their business practices when performing acts for which a real estate license is required.

The Suggestions are not intended as statements of duties imposed by law nor as grounds for disciplinary action by the Department of Real Estate but as suggestions for elevating the professionalism of real estate licensees.

As part of the effort to promote ethical business practices of real estate licensees, the real estate commissioner has issued the following Suggestions for Professional Conduct:

- (a) Suggestions for Professional Conduct in Sale, Lease, and Exchange Transactions. In order to maintain a high level of ethics and professionalism in their business practices, real estate licensees are encouraged to adhere to the following suggestions in conducting their business activities:
 - (1) Aspire to give a high level of competent, ethical, and quality service to buyers and sellers in real estate transactions.
 - (2) Stay in close communication with clients or customers to ensure that questions are promptly answered and all significant events or problems in a transaction are conveyed in a timely manner.
 - (3) Cooperate with the California Department of Real Estate's enforcement of, and report to that Department evident violations of, the Real Estate Law.
 - (4) Use care in the preparation of any advertisement to present an accurate picture or message to the reader, viewer, or listener.
 - (5) Submit all written offers in a prompt and timely manner.
 - (6) Keep informed and current on factors affecting the real estate market in which the licensee operates as an agent.
 - (7) Make a full, open, and sincere effort to cooperate with other licensees, unless the principal has instructed the licensee to the contrary.
 - (8) Attempt to settle disputes with other licensees through mediation or arbitration.
 - (9) Advertise or claim to be an expert in an area of specialization in real estate brokerage activity (e.g., appraisal, property management, industrial siting, mortgage loan, etc.), only if the licensee has had special training, preparation, or experience in such areas.
 - (10) Strive to provide equal opportunity for quality housing and a high level of service to all persons regardless of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.
 - (11) Base opinions of value, whether for the purpose of advertising or promoting real estate brokerage business, upon documented objective data.
 - (12) Make every attempt to comply with these Suggestions for Professional Conduct and the Code of Ethics of any organized real estate industry group of which the licensee is a member.
- (b) Suggestions for Professional Conduct When Negotiating or Arranging Loans Secured by Real Property or Sale of a Promissory Note Secured by Real Property. In order to maintain a high level of ethics and professionalism in their business practices when performing acts within the meaning of subdivision (d) and (e) of Section 10131 and Sections 10131.1 and 10131.2 of the Business and Professions Code, real estate licensees are encouraged to adhere to the following suggestions, in addition to any applicable provisions of subdivision (a), in conducting their business activities:
 - (1) Aspire to give a high level of competent, ethical, and quality service to borrowers and lenders in loan transactions secured by real estate.
 - (2) Stay in close communication with borrowers and lenders to ensure that reasonable questions are promptly answered and all significant events or problems in a loan transaction are conveyed in a timely manner.
 - (3) Keep informed and current on factors affecting the real estate loan market in which the licensee acts as an agent.
 - (4) Advertise or claim to be an expert in an area of specialization in real estate mortgage loan transactions only if the licensee has had special training, preparation, or experience in such area.

Suggestions for Professional Conduct

- (5) Strive to provide equal opportunity for quality mortgage loan services and a high level of service to all borrowers or lenders regardless of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.
- (6) Base opinions of value in a loan transaction, whether for the purpose of advertising or promoting real estate mortgage loan brokerage business, on documented objective data.
- (7) Respond to reasonable inquiries of a principal as to the status or extent of efforts to negotiate the sale of an existing loan.
- (8) Respond to reasonable inquiries of a borrower regarding the net proceeds available from a loan arranged by the licensee.
- (9) Make every attempt to comply with the standards of professional conduct and the code of ethics of any organized mortgage loan industry group of which the licensee is a member.

The conduct suggestions set forth in subsections (a) and (b) are not intended as statements of duties imposed by law nor as grounds for disciplinary action by the Department of Real Estate, but as guidelines for elevating the professionalism of real estate licensees.

FAIR HOUSING AND ANTIDISCRIMINATION LEGISLATION

Fair housing legislation and practices involve almost every activity in real estate. The federal and state governments have passed legislation in the areas of fair housing and antidiscriminatory practices. Material regarding housing discrimination also appears in the real estate commissioner's Rules and Regulations and in the Business and Professions Code.

Federal Laws

Real estate brokers and salespeople should heed these laws in every stage of the real estate process. An understanding of the history of antidiscrimination laws will help you understand the need for this legislation.

Although the Declaration of Independence originally contained language condemning slavery, that language was removed shortly before the document was signed to ensure the consensus of all the states. However, the Declaration of Independence did retain the following statement: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain Inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." There was an attempt to outlaw slavery when the U.S. Constitution was written. Because of strong opposition, wording that would outlaw slavery was not included based on "practical" considerations.

While there was strong antislavery sentiment in the northern states, by the mid-1800s, the South's economy had become dependent on slave labor. The invention of the cotton gin and the Industrial Revolution had made cotton growing very lucrative. In 1820, the Missouri Compromise allowed Missouri to enter the Union without restrictions as to slavery, while Maine would enter as a free state. The western territories were to be free.

In 1857, the U.S. Supreme Court issued the **Dred Scott decision** that basically ordered the federal government to keep out of the slavery issue because it was a matter for the states to decide. The court held that only a state could exclude slavery and that Congress had exceeded its authority by prohibiting slavery in the territories. The Missouri Compromise was thus held unconstitutional.

The court also made clear that "Negroes" were not entitled to rights as U.S. citizens and had "no rights which any white man was bound to respect." The court pointed out that slaves were property and that the U.S. Constitution guaranteed property rights.

The Dred Scott decision was received with anger in the North. It led to sectionalism that divided the nation and was a prime cause of the Civil War.

Thirteenth Amendment. The Thirteenth Amendment to the Constitution abolished slavery, but it did not specifically address the rights of former slaves.

The Civil Rights Act of 1866 had no exceptions.

Civil Rights Act of 1866. The **Civil Rights Act of 1866** was intended to provide equal treatment for former slaves. It states that “all citizens of the United States shall have the same rights in every state or territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”

While this act was broad in its protection, it applied only to race. There were exceptions to the act, which could be enforced by any individual who was discriminated against. Remedies included injunction and compensatory and punitive damages.

Fourteenth Amendment. The Fourteenth Amendment to the Constitution was passed after the Civil Rights Act of 1866. Supporters of the amendment pointed out that it would protect the rights granted in the 1866 act by providing protection in the U.S. Constitution. This would prevent a later Congress or court from taking away these rights.

The Fourteenth Amendment states the following:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Obviously, the Fourteenth Amendment did not limit itself to race. A reasonable interpretation of the above quote would be that the Fourteenth Amendment offered comprehensive civil rights protection.

Civil Rights Act of 1870. Some attorneys were of the opinion that because the Fourteenth Amendment was passed after the Civil Rights Act of 1866, that act had been effectively replaced and was no longer law. So to protect against later courts taking away the remedies granted by the 1866 act, the following statement was tacked onto a voting rights act in 1870 (**Civil Rights Act of 1870**):

And be it further enacted that the act to protect all persons in the United States in their civil rights and furnish the means of their vindication, passed April nine, eighteen hundred and sixty-six, is hereby re-enacted.

Thus, the Civil Rights Act of 1866 was passed twice to make certain it would withstand possible future challenges in the courts. However, the act was effectively gutted by state court decisions and failure of the federal courts to enforce the act. The act, as well as the Fourteenth Amendment, was ineffective in providing equal rights for approximately 100 years.

Executive Order 11063. On November 21, 1962, President John F. Kennedy issued an order that prohibited discrimination in housing wherever federal funds were involved. The order affected property sales involving FHA and VA loans, as well as other government-subsidized programs. It stated that

the executive branch of the government, in faithfully executing the laws of the United States which authorize federal financial assistance, directly or indirectly for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assume that the laws are fairly administered and that benefits there under are made available to all Americans without regard to their race, color, creed, or national origin.

Civil Rights Act of 1964. The **Civil Rights Act of 1964** made the 1962 executive order law and is considered among the first of the modern civil rights acts. While it prohibited discrimination in all federally assisted programs, prior and later acts are far more comprehensive.

Jones v. Mayer upheld the Civil Rights Act of 1866.

Jones v. Mayer. In the same year that the Civil Rights Act of 1968 was passed (below), the Supreme Court decided the case of *Jones v. Mayer*, which involved a seller who refused to sell a home to an African American. Both the district court and the court of appeals ruled that the Civil Rights Act of 1866 prohibited discrimination by the state but not by individuals. The Supreme Court reversed, ruling that the Civil Rights Act of 1866 applied to private property and could be enforced by the party discriminated against. The court based its decision on the 13th Amendment because the act was passed before passage of the 14th Amendment.

Civil Rights Act of 1968. The **Civil Rights Act of 1968** prohibited discrimination in housing based on national origin, race, religion, and color. (Sexual discrimination was added in 1974.) The act prohibits the following:

- Discrimination by brokers toward clients and customers
- Refusal to show, rent, or sell through the false representation that a property is not available
- Discrimination as to access to multiple listing services
- Discriminatory sales or loan terms
- **Steering**, the act of directing people of different races, religions, et cetera, away from or toward particular areas
- **Blockbusting**, the process of inducing panic selling by representing that prices will drop or crime will increase because of the possible entrance of minority group members to the area
- **Redlining**, the refusal to loan within an area
- Retaliatory acts against persons making fair-housing complaints and intimidation to discourage complaints
- Discriminatory advertising, which is prohibited even when related to activities exempt from the act

Steering is directing based on a group.

Blockbusting is inducing panic selling.

Redlining is refusal to loan in designated areas.

There has been a great deal of concern as to what advertising might be considered discriminatory. Advertising that a property is close to a particular house of worship or a place that has a racial connotation (such as “Martin Luther King Hospital”) has been held to be discriminatory, as have ads that indicate a preference for a

particular race or marital status or ads that indicate a member of a protected category is not welcome.

Advertising Terms Acceptable by HUD

HUD has indicated that use of the following terms and phrases are not discriminatory: master bedroom, rare find, desirable neighborhood, kosher meals available, apartment complex with chapel, Santa Claus, Easter Bunny, St. Valentine's Day, Merry Christmas, Happy Easter, mother-in-law suite, bachelor apartment, great view, fourth-floor walkup, walk-in closets, jogging trails, walk to bus stop, nonsmoking, sober, two-bedroom, family room, no bicycles allowed, and quiet streets.

There is still a great deal of confusion as to what HUD will consider discriminatory advertising. Several groups have published lists of terms that are acceptable, that are to be used with caution, or that are to be regarded as discriminatory. However, clearance through one of these lists does not mean that HUD will not regard the language as discriminatory. One problem is that words have different connotations within different groups, as well as regions in the country. HUD has indicated it will not approve any of the published lists. (See Unit 8 for more details.)

There are some exemptions to the Civil Rights Act of 1968. The following exemptions apply to the Civil Rights Act of 1968 but are not exemptions under the Civil Rights Act of 1866 or under California fair housing laws:

- Religious groups, which can discriminate in providing nonprofit housing, provided that the religion is open to all, regardless of race, sex, color, or national origin
- Private clubs, which can discriminate or give preference to members when selling or leasing housing for noncommercial purposes
- Owners of single-family homes, who can discriminate when selling or renting without an agent, provided that they do not own more than three such homes and are not in the business of renting
- Owners of one-to-four-residential-unit buildings who occupy a unit and who can discriminate if an agent is not used in renting

The 1988 Fair Housing Amendments Act extended protection in regard to familial status and the handicapped.

1988 Fair Housing Amendments Act. This important law extended federal protection against housing discrimination to include **familial status** and handicapped persons. It also strengthened the enforcement mechanisms and gave HUD greater enforcement power. Familial status protection refers to persons under age 18 living with a parent or guardian, persons in the process of obtaining legal custody, and pregnant persons.

The real estate agent should also be aware that adult-only designations are no longer possible, although there are exceptions to this rule. Operators of projects can either set up a community in which all residents must be at least age 62 or in which 80% of the units are occupied by at least one person age 55 years or older.

Even if an apartment complex has a family section, designation of an all-adult area still is prohibited. Steering prospective tenants toward a particular area in an apartment complex and away from another area also violates the act.

Apartments can have rules for children's use of facilities when there is a non-discriminatory reason for the difference in rules. The Civil Rights Act of 1968 does not prohibit owners from setting maximum occupancy of units as long as the rule is enforced without discrimination. (It is likely that unreasonably limited occupancy rules would be unenforceable because they would discriminate against families with children.)

Discrimination against the handicapped is prohibited. The term *handicapped* refers to both mentally and physically handicapped persons. AIDS is considered a handicap under the act, so landlords and sellers cannot discriminate against a person with AIDS or HIV infection. The law specifically prohibits discrimination against guide dogs and support animals. Landlords cannot require additional security deposits because of these animals.

Property managers should be aware that the handicapped must be allowed to alter their units and common areas if such alterations are necessary for reasonable use and enjoyment of the premises. The property manager cannot increase the security deposit because of these alterations. However, the landlord *can* require that the tenant agree to put the premises back as they originally were if an able-bodied person would not wish the alterations to remain.

Brokers should prominently display the Equal Housing Opportunity poster (Figure 2.3) in all rental offices. Failure of the broker to post this poster in the place of business can shift the burden of proof to the broker to prove that an act was nondiscriminatory under federal law, should a complaint be made.

Advertising residential financing must contain an Equal Housing Opportunity logo, slogan, or statement advising the homeseeker that financing is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin.

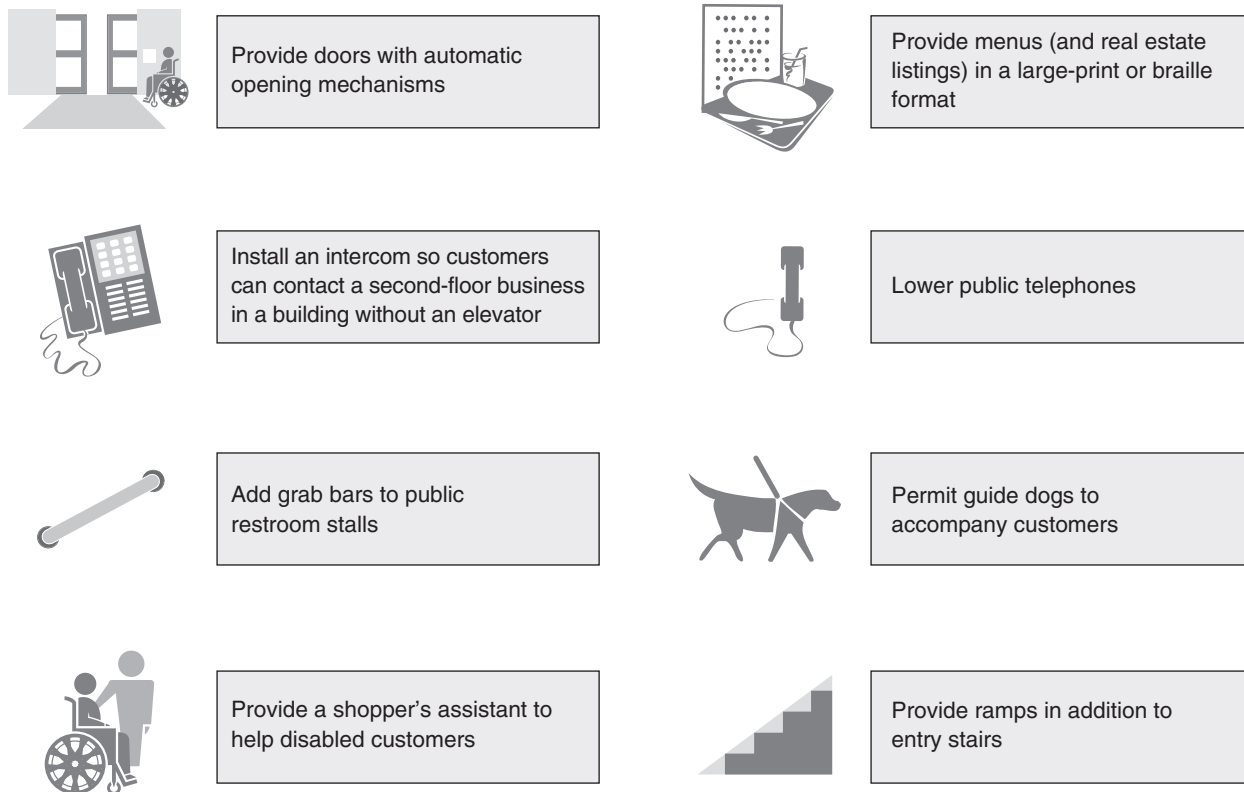
Americans with Disabilities Act. The **Americans with Disabilities Act (ADA)** prohibits discrimination that would deny the equal enjoyment of goods, services, facilities, and accommodations in any existing place of public accommodation, based on an individual's physical or mental disabilities. A "**place of public accommodation**" applies to stores, offices, and other nonresidential commercial facilities open to the public.

Owners and operators of such establishments (including property management firms) must make the facilities accessible to the extent *readily achievable*. (See Figure 2.2.) "**Readily achievable**" is defined as "easily accomplished without a great deal of expense." This would be based on the cost of compliance related to property values and on the financial abilities of the person(s) involved. New construction must be readily accessible unless it is structurally impractical.

The ADA also applies to employment discrimination. Employers having 15 or more employees must alter their workplaces to provide reasonable accommodations for handicapped employees unless it creates an undue hardship on the business. Compliance for a real estate office might consist of designating parking spaces for the handicapped, ramping curbs, adding railings on steps, lowering counters, creating wider aisles between desks, et cetera.

The act provides for civil penalties of \$55,000 to \$75,000 for the first discriminatory act and up to \$150,000 for each subsequent violation, including compensatory damages and attorneys' fees. Because of the substantial penalties, owners and property managers should be aware that a cottage industry has evolved of handicapped persons and attorneys who seek out properties with handicapped-access deficiencies to sue for damages. Several handicapped individuals have brought legal action against more than 100 businesses. Businesses usually agree to a settlement rather than a costly trial and possible penalties.

FIGURE 2.2: Reasonable Modifications to Public Facilities or Services



Equal Credit Opportunity Act. This federal act prohibits credit discrimination because of sex, marital status, age, race, religion, national origin, or because the income of a credit applicant is from public assistance.

FIGURE 2.3: Equal Housing Opportunity Poster

U. S. Department of Housing and Urban Development

**EQUAL HOUSING
OPPORTUNITY****We Do Business in Accordance With the Federal Fair
Housing Law**

(The Fair Housing Amendments Act of 1988)

**It is illegal to Discriminate Against Any Person
Because of Race, Color, Religion, Sex,
Handicap, Familial Status, or National Origin**

- | | |
|--|--|
| ■ In the sale or rental of housing or residential lots | ■ In the provision of real estate brokerage services |
| ■ In advertising the sale or rental of housing | ■ In the appraisal of housing |
| ■ In the financing of housing | ■ Blockbusting is also illegal |

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:

1-800-669-9777 (Toll Free)

1-800-927-9275 (TTY)

www.hud.gov/fairhousing

**U.S. Department of Housing and
Urban Development
Assistant Secretary for Fair Housing and
Equal Opportunity
Washington, D.C. 20410**

Previous editions are obsolete

form HUD-928.1 (6/2011)

FIGURE 2.3: Equal Housing Opportunity Poster (continued)

U. S. Department of Housing and Urban Development
Departamento de la Vivienda y el Desarrollo Urbano de los EE.UU.



**EQUAL HOUSING
OPPORTUNITY**
IGUALDAD DE OPORTUNIDADES
EN LA VIVIENDA

**Nuestras prácticas de negocios cumplen la ley federal
de equidad en la vivienda**

(Enmienda a la ley de Equidad en la vivienda de 1988)

**Es ilegal discriminar contra ninguna persona a
causa de su raza, color, religión, sexo,
discapacidad, situación familiar u origen nacional**

- | | |
|--|--|
| ■ En la venta o el alquiler de viviendas o lotes residenciales | ■ En la provisión de servicios de corredores de bienes raíces |
| ■ En la publicidad relacionada con la venta o el alquiler de viviendas | ■ En la tasación de viviendas |
| ■ En la financiación de la vivienda | ■ Las tácticas de intimidación (Blockbusting) también son ilegales |

Cualquier persona que crea que ha sido discriminada puede presentar una reclamación de discriminación en la vivienda:

1-800-669-9777 (Línea gratuita)

1-800-927-9275 (TTY)

www.hud.gov/fairhousing

**U.S. Department of Housing and
Urban Development
Assistant Secretary for Fair Housing and
Equal Opportunity
Washington, D.C. 20410**

Las ediciones anteriores son obsoletas
Previous editions are obsolete

formulario HUD-928.1 (6/2011) – Spanish
form HUD-928.1 (6/2011)

California Fair Housing Laws

California has several fair housing laws, as well as administrative regulations dealing with discrimination. A single act could be a violation of more than one state or federal law or regulation, or both.

The Unruh Act applies to business discrimination.

Unruh Act. The **Unruh Act** prohibits discrimination in all business establishments. The Unruh Act applies to real estate brokers, salespeople, and anyone managing an apartment building or other business establishment. Business discrimination includes housing discrimination based on sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, familial status, and sexual orientation. The act has been extended to cover citizenship, primary language, and immigration status. ADA provisions have been incorporated into the act.

A violation of the Unruh Act, can result in a court award of a maximum of three times actual damages but not less than \$4,000. In addition, the violation could result in a civil penalty up to \$25,000.

The act has been expanded to apply to age discrimination in rental apartments and condominium properties. Housing developed and designed for the special needs of senior citizens is exempt from this act.

Rumford Fair Housing Act. The **Fair Employment and Housing Act**, also known as the **Rumford Act** (Government Code Sections 12900 et seq.), prohibits discrimination in supplying housing accommodations on the basis of sex, color, race, religion, marital status, family status, sexual orientation, disability, source of income, ancestry, or national origin. Anyone selling, renting, leasing, or financing housing must comply with the Rumford Act.

While California's fair housing laws protect people regardless of sexual orientation, gender identity, or gender expression, the federal Fair Housing Act does not specifically recognize these as protected classes. Therefore, for discriminatory practices, an aggrieved party should enforce their rights under California law rather than as a federal matter.

While the Unruh Act applies to discrimination by businesses, the Rumford Act applies to all housing discrimination by individuals and businesses. Unlike the Unruh Act, it applies only to housing.

At Home With Diversity

In recognition of our rapidly changing national demographics, the National Association of REALTORS® and the U.S. Department of Housing and Urban Development created the At Home with Diversity program to expand home ownership opportunities for more Americans by training real estate professionals to actively and aggressively seek out potential homebuyers from all racial and cultural backgrounds. Licensees who take this **diversity training** program, sponsored by the NAR, will learn how attending diverse cultural and community events can expand their client base, find out how simple multicultural etiquette can lead to success with new clients and customers, and develop sound diversity strategies to incorporate into their overall business plan.

An individual violating any part of this act may be reported to the Department of Fair Employment and Housing within one year of the occurrence. The Rumford Act predated the Civil Rights Act of 1968. Rumford Act violations are also violations of the federal act.

Business and Professions Code

The California Business and Professions Code governs real estate licensees' behavior, in addition to federal and state fair housing laws. The code provides detailed antidiscrimination material, including a definition of the term *discrimination* as used in the code, and sections detailing behavioral guidelines for licensees and grounds for disciplinary action in cases of noncompliance.

Section 125.6: Disciplinary Provisions for Discriminatory Acts

Under Section 125.6, persons who hold a license under the provisions of the code are subject to disciplinary action if they refuse to perform a licensed activity or make any discrimination or restriction in the performance of the licensed activity because of an applicant's race, color, sex, religion, ancestry, physical handicap, or national origin.

Section 10177(l): Further Grounds for Disciplinary Action

Discrimination occurs

if a licensee solicited or induced the sale, lease, or listing for sale or lease, of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools, due to the presence or prospective entry into the neighborhood of a person or persons of another race, color, religion, ancestry, or national origin.

Regulations of the Real Estate Commissioner Section 2780: Discriminatory Conduct as the Basis for Disciplinary Action

Prohibited discriminatory conduct by real estate licensees based on race, color, sex, religion, physical handicap, or national origin includes:

- a. refusing to negotiate for the sale, rental, or financing;
- b. refusing or failing to show, rent, sell, or finance;
- c. discriminating against any person in the sale or purchase, collection of payments, or performance of services;
- d. discriminating in the conditions or privileges of sale rental or financing;
- e. discriminating in processing applications, referrals, or assigning licenses;
- f. representing real property as not available for inspection;
- g. processing an application more slowly;
- h. making any effort to encourage discrimination;
- i. refusing to assist another licensee;
- j. making an effort to obstruct, retard, or discourage a purchase;
- k. expressing or implying a limitation, preference, or discrimination;
- l. coercing, intimidating, threatening, or interfering;
- m. soliciting restrictively;
- n. maintaining restrictive waiting lists;
- o. seeking to discourage or prevent transactions;
- p. representing alleged community opposition;
- q. representing desirability of particular properties;
- r. refusing to accept listings;
- s. agreeing not to show property;
- t. advertising in a manner that indicates discrimination;
- u. using wording that indicates preferential treatment;
- v. advertising selectively;
- w. maintaining selective pricing, rent, cleaning, or security deposits;
- x. financing in a discriminatory manner;
- y. discriminating in pricing;
- z. discriminating in services;
- aa. discriminating against owners, occupants, or guests;
- ab. making an effort to encourage discrimination;
- ac. implementing discriminatory rule in multiple listings and other services; and
- ad. assisting one who intends to discriminate.

Section 2781: Panic Selling

Section 2781 prohibits discriminatory conduct that creates fear or alarm to induce sale or lease because of the entry into an area of people of another race, color, sex, religion, ancestry, or national origin.

Section 2782: Duty to Supervise

Brokers must take reasonable steps to be familiar with, and to familiarize their salespeople with, the federal and state laws pertaining to prohibition of discriminatory process.

Holden Act (Housing Financial Discrimination Act of 1977). The Holden Act prohibits financial institutions from engaging in discriminatory loan activities or practices. Activities covered under this act include awarding building, improvement, purchase, or refinancing loans using the criteria of race, color, national origin, ancestry, sex, religion, or marital status. Discrimination based

on the ethnic composition of the area surrounding a property (redlining) is also illegal.

California Omnibus Housing Nondiscrimination Act. This act makes all California's nondiscrimination acts consistent with the California Fair Employment and Housing Act as to coverage. All the acts apply to discrimination on the basis of national origin, ancestry, race, color, gender, religion, marital status, familial status, disability, source of income, and sexual orientation.

COMMISSIONER'S RULES AND REGULATIONS

Article 10 of the Real Estate Commissioner's Rules and Regulations concerns the discriminatory activities of real estate licensees. Regulations 2780, 2781, and 2782, contained within Article 10 (summarized above), list unacceptable discriminatory practices by licensees. Regulation 2780 indicates that discriminatory conduct by real estate licensees is a basis for disciplinary action by the Commissioner.

Licensees must be color-blind in their relations with owners and prospective buyers and tenants. Anything less is a violation of the law, as well as just "bad business."

EXPLICIT AND IMPLICIT BIAS

Explicit bias is conscious bias where the individual knows that their prejudices affect their actions. When people consider a group or category of individuals a threat, they are likely to express explicit bias. As an example, people viewed Asian Americans as an economic threat to their jobs. This led to restrictive laws and regulations. Emphasizing common interests and goals rather than differences can help in moderating explicit bias.

While many people feel they act without bias, they are probably deceiving themselves. It is rare for a person not to feel some degree of bias. Implicit bias is unconscious bias based on stereotyping and is usually acquired at an early age from family, friends, media, or early experiences.

Implicit bias can be positive or negative. As an example, a teacher could expect Asian Americans to excel in math but expect African American students to be at a lower skill level. As another example, a school career counselor might regularly suggest careers in nursing, health services, teaching, or bookkeeping when advising female students but not when advising male students.

In real estate, the dress, age, grooming, and speech of a prospective buyer could influence an agent as to which areas to concentrate on homes to show and features to emphasize.

Similarly, some salespeople's hiring decisions could be based on age, race, sex, and even weight of an applicant.

A number of tests determine implicit bias. As an example, a test might be a group of photos of people to be matched with careers from a list provided.

Another test could be a list of your friends, including their race and religion and any common factors. Great diversity would indicate a low bias level but the list's high degree of similarity could indicate bias.

Professors Mahzarin R. Banaji and Anthony G. Greenwald, both social psychologists, wrote *Blindspot: Hidden Biases of Good People*. They have five tips to uncover unconscious bias:

1. Acknowledge potential for bias. Accept the brain's tendency toward bias.
2. Be wary of first impressions. When we meet people, we form almost instantaneous judgments based on dress, speech, facial expressions, and even the shape of a person's head. Those first impressions may have no rational relevance to the person.
3. Learn about stereotypes. As an example, the assumption that a person with an Irish name is Catholic is a stereotype.
4. Broaden your focus. We tend to see and feel what we expect to see and feel. We tend to dismiss contrary ideas or assume they are wrong.
5. Expose yourself to alien experiences. You can do this by changing the unfamiliar into the familiar. Professor Banaji does this with pictures on her screensaver, which jolt her own cultural assumptions. Her favorite picture is of a construction worker wearing a hard hat and heavy boots while breastfeeding a baby during a lunch break.

Professors Banaji and Greenwald point out that “a preference for diversity is not always a natural taste. It has to be acquired.”¹

If you recognize your bias, you can make a conscious effort to eliminate or mitigate the bias. It can reduce the influence of the bias on your actions.

SEXUAL HARASSMENT

In today's workplace, you must be cognizant of what could be regarded by others as **sexual harassment**. Charges of sexual harassment could result in legal expenses and significant damage awards or settlement costs, time to resolve, and damage to reputation. Sexual harassment can be defined by how your actions are viewed by others, not necessarily by your intent.

A claim of sexual harassment can adversely affect your working relationship with others. This would include co-workers, agents in other offices, and buyers and sellers.

Always conduct yourself in a businesslike manner. The only needs of others that you try to fulfill must be those relating to real estate.

¹ Mahzarin R. Banaji and Anthony G. Greenwald, *Blindspot: Hidden Biases of Good People* (New York: Delacorte Press, 2013).

Jokes, remarks, and touching might be regarded by others as sexual harassment.

In general, observe the following:

- Avoid sexually oriented jokes and anecdotes. Don't use "cute," double-meaning terms. Never discuss your love life or that of others in the workplace.
- Avoid patting, hugging, and touching others. What you might regard as a sign of "friendship" might be regarded differently by others.
- Allow others space. While in some cultures it is acceptable to talk to others with your face just inches from the other person, many people regard this closeness as intimidating and/or sexual harassment.
- Avoid romantic overtures or entanglements in the workplace.
- Avoid asking a co-worker for a date. If repeated on numerous occasions, it could be regarded as harassment. If a romantic relationship gets started in the workplace, a difficult working relationship will normally be the result should the romantic relationship end.
- Whenever possible, avoid one-on-one encounters in other than an open area. Some problem tenants have made multiple claims of sexual harassment by owners and property managers.

If a buyer or a seller seems to be inviting sexual advances, ignore the signals. You could be wrong, and if you are, you could find yourself facing a charge of sexual harassment.

Employers with five or more employees must provide two hours of training for all supervisory employees as to sexual harassment within six months of hire and every two years thereafter.

SHERMAN ANTITRUST ACT

The **Sherman Antitrust Act** is a federal act to protect consumers from businesses that conspired to control prices and/or competition. Penalties for violation can include imprisonment. The act prohibits the following:

- **Price-fixing** (brokers cannot agree on minimum fees to be charged) Prudent brokers will add a statement in bold to the listing advising the seller of the negotiability of real estate commissions. This is an important aspect of strengthening the industry's compliance with this rule.
- **Market allocation** (it's illegal to divide a marketplace geographically or by type of service because it reduces competition)
- **Group boycotting** (firms may not agree to refuse to do business with a firm or individual)
- **Tie-in agreements** (agreements that require a client to buy additional goods or services as a condition of doing business or cooperating)

In September 2005, the Department of Justice filed a lawsuit alleging that a REALTOR® policy allowing brokers to block their listings from being displayed on other broker websites is a restraint on competition. An antitrust settlement between the

National Association of REALTORS® and the Justice Department in May 2008 prohibits REALTOR® rules that block listings of homes from being displayed on other brokers' websites.

A violation of the Sherman Act is likely to also violate the **Cartwright Act**, California's antitrust law allowing for damages for injuries suffered.

OTHER LAWS AND REGULATIONS

Besides civil rights and antitrust legislation, there are numerous other federal and state statutes that apply to real estate transactions.

The Real Estate Settlement Procedures Act (RESPA) prohibits kickbacks from service providers to brokers. It makes illegal what was a common but unethical practice of "taking care" of agents who steered business to service providers. By accepting kickbacks of any sort, the agent feels an obligation to the service provider to steer business to that service provider when the agent's obligations should be to best serve the interests of the principal. Kickbacks prohibited by RESPA include cash, free business equipment, nonbusiness meals, tickets to events, and recreation fees.

California regulations include Sections 1000 through 10581 of the Business and Professions Code, which regulates real estate licensing, and Sections 11000 through 11030 of the Code, which regulates real estate licensees.

Additional Housing. To help alleviate the housing shortage, state law now allows duplexes to be built on lots zoned for single-family residences and allows homeowners to add accessory units.

CONSUMER RECOVERY FUND

The fund allows a person who has been defrauded or has had trust funds diverted by a real estate licensee in a transaction requiring a real estate license to recover from the fund.

The injured party must obtain a judgment and show collection is not possible.

After applying to the recovery fund, if the application is granted, the applicant will be entitled to his or her direct costs up to \$50,000 per transaction. No more than \$250,000 will be paid in total for any licensee, no matter how many claims are made.

TRUST FUNDS

Trust funds refer to money or anything of value received by an agent, but not belonging to the agent, and held for the benefit of another. When a broker receives funds for a transaction, the broker must, within three days of receipt of the funds, do one of the following:

- Give the funds to the principal.
- Deposit the funds directly into escrow.

- Place the funds in the broker's trust account. (A broker who does not receive funds in trust does not need to have a trust account.)

Commingling is the mixing of property of another (trust funds) with property of the broker. Commingling is a violation of the Commissioner's Regulations and subject a broker to severe disciplinary action. Holding the funds without authorization is **commingling**. (The broker can hold a check uncashed at the direction of the buyer before acceptance of an offer and at the direction of the seller after acceptance.)

Should a broker misappropriate trust funds for personal or any other use than what was designated, the act would be considered **conversion**, which is a criminal offense.

It is important that **trust funds** be handled properly. Improprieties regarding trust funds are the number one reason for disciplinary action against real estate licensees. Some general rules for trust funds include the following:

- Trust accounts must be in the name of the broker as trustee.
- Unless otherwise agreed, in cooperative sales, listing brokers deposit the funds in their trust account.
- In the absence of written permission from the client, a broker may not receive a commission or consideration of any kind for placement of the trust monies.
- A separate record must be kept of all trust funds received that are not deposited in a trust account (example: checks returned to offeror when offer is rejected). Accounts must be balanced daily and reconciled with bank records monthly. A separate record must be kept for each beneficiary.
- Accounts must be demand deposits (non-interest-bearing that can be withdrawn without notice) with the exception that accounts may be kept in a separate interest-bearing account with a federally insured lender at the direction of the owner of the funds. The broker may not benefit from any interest earned. Drawing interest on trust funds for the benefit of the principal can cause an accounting challenge. Interest earned must be prorated if one trust account contains funds for multiple beneficiaries.
- A broker may keep no more than \$200 of broker funds in the trust account. This is to cover bank charges. Any greater amount of nontrust money in the account would subject the broker to disciplinary action.
- Earned commissions must be withdrawn from the account within 25 days.
- Columnar records must be kept (double entry) with separate records for each beneficiary and transaction.
- The account must be open for inspection by the Department of Real Estate.
- Should a DRE audit reveal a violation of the law, the broker will be assessed the cost of the audit, as well as be subject to disciplinary action, which could result in revocation of the broker's license.

- The broker can designate another person to withdraw trust funds from the trust account, but if that person is not licensed, a bond is required. However, the broker bears liability for any improper action.
- Records must be kept for three years.
- Computer programs are available for trust fund accounting. See Figure 2.4: Trust Bank Account Record for All Trust Funds Deposited and Withdrawn for a sample Trust Bank Account Record for Trust Funds Deposited and Withdrawn.

Records of trust funds must include in chronological sequence and columnar form:

- Date trust funds received
- From whom received
- Amount received
- Date funds deposited in trust account
- Check number and date of trust disbursements
- Identity of any depositories if not deposited in trust account
- Daily trust account balance


There are additional regulations and reporting requirements for trust monies received by mortgage loan brokers.

Penalties for trust fund violations include the following:

- A financial penalty
- Suspension or revocation of license
- Imprisonment

WEB LINK

The commissioner's document dealing with trust fund handling "The Why, What, and How To" is available on the DRE website. Go to www.dre.ca.gov/forms/ and search for "trust funds."

FIGURE 2.4: Trust Bank Account Record for All Trust Funds Deposited and Withdrawn


**TRUST BANK ACCOUNT RECORD FOR ALL TRUST FUNDS
DEPOSITED AND WITHDRAWN**
(C.A.R. Form TAA, Revised 11/07)

Broker: _____

Address: _____

DATE	DEPOSIT (Received From)	OR	WITHDRAWAL (Paid To)	AMOUNT	BALANCE
					If applicable, forward from previous page \$
	Name: _____ <input type="checkbox"/> check <input type="checkbox"/> cash <input type="checkbox"/> _____ For: _____		Name: _____ Check # _____ For: _____	\$	\$
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TAA REVISED 11/07 (PAGE 1 OF 1)

TRUST BANK ACCOUNT RECORD FOR ALL TRUST FUNDS DEPOSITED AND WITHDRAWN (TAA PAGE 1 OF 1)

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CASE EXAMPLES

The following case examples are included to help you understand how ethics applies to you and to help you recognize your responsibilities regarding fair housing.

Case Example 1

Broker McIntosh realized that Henry Higgins was extremely naive about financial matters. While McIntosh usually charged a 6% commission for similar residential properties, when she filled out the listing for Higgins's home, she wrote "11%" in the commission block. She did, however, explain to Higgins that her fee was 11% and provided Higgins an estimate of what he would receive based on a sale at the list price, which was realistically set. Analyze McIntosh's actions from an ethical perspective.

Analysis 1

Legally, McIntosh did nothing wrong. Commissions are negotiable, and she simply negotiated to her advantage. Ethically, there are some problems. McIntosh charged almost twice her customary fee for the service, not because of problems the property presented but because she thought she could. This action certainly would not pass the test of the Golden Rule. How do you suppose McIntosh would feel if she found that a mechanic charged her an exorbitant fee for a simple adjustment to her vehicle because she was naive about mechanical matters?

A more interesting ethical question arises regarding other owners who have listed similar properties with McIntosh for a 6% commission. McIntosh is likely to give priority to selling the 11% listing over other listings, which would work to the detriment of other owners who expected the best efforts from McIntosh. Similarly, if McIntosh customarily split commissions with selling agents, other agents would likely give similar preferences. Therefore, applying the Golden Rule from the perspective of other owners also indicates that the 11% commission is unethical.

There could be circumstances, however, in which a higher-than-normal commission is justified. These could include property that requires greater sales effort or situations in which a quick sale is essential to protect the owner's interests (for example, a pending foreclosure).

Case Example 2

Tom Huang wanted to buy a lot in Sunrise Estates. While there were several dozen vacant lots in the subdivision, none currently had For Sale signs. Huang contacted Omni Realty and met with salesperson Upton. Upton told Huang that if a lot could be purchased in Sunrise Estates, she would find it.

Using tax records, Upton contacted owners of the vacant lots and asked them if they wanted to sell their lots. Owner Pike was receptive to the idea of a sale and indicated he would sell if he could net \$100,000. Upton knew the lots were worth

between \$150,000 and \$175,000, so she purchased it for \$100,000. She then contacted Huang and told him about the lot and that she was now the owner. Huang was delighted and agreed to buy the lot for \$160,000. Upton never revealed the transaction to her broker. What ethical problems are raised by this case?

Analysis 2

Tom Huang could reasonably assume that Upton was working on his behalf when she agreed to locate a lot for him. Instead, Upton acted on her own behalf and purchased a lot for herself, which she offered to Huang at a higher price as a principal.

While Huang may have been comfortable with Upton's purchase and may not have objected to the price, what started as a clear buyer's agency relationship was unilaterally changed by Upton to her own benefit. Huang paid more for the lot than he should have, had Upton been properly serving him. Upton had no duty to disclose to Pike that she felt the price was too low or that she had a buyer whom she believed would pay more money. Upton was not Pike's agent.

Although Huang had contacted Upton through Omni Realty, Upton turned what was originally contemplated as a brokerage situation into her own purchase and sale for profit. She in fact deprived her broker of a commission by her self-serving actions. Application of the Golden Rule would indicate unethical conduct on the part of Upton. Upton could be subject to civil damages as well as DRE disciplinary action.

Case Example 3

Broker Zwerik was a member of a listing service. While Zwerik usually submitted his listings to the service, whenever he took a high-value listing that was also highly salable, he would recommend to the owner that for the owner's protection it would be best that Zwerik Realty be the only firm allowed to show the property. He would then cross out the listing authorization to cooperate with other agents and to give the listing to a listing service. He had the owner initial these modifications.

When other agents called Zwerik about his signs or ads on the property, Zwerik told them that the owner had specified in writing that only his firm would be allowed to show the property and that the listing information should not be given to any other agent. Was Zwerik's conduct proper?

Analysis 3

Broker Zwerik wants to be able to sell other office listings and wants other offices to help in the sale of most of his listings. But when he takes a listing that offers a substantial commission and is exceptionally desirable, the spirit of cooperation ends. The reason he persuades owners that he alone be allowed to show the property is based solely on the value and salability of the listing, not on the owner's best interests. Apply the Golden Rule: Would Zwerik want other brokers to withhold

their better listings from him and give him only properties less likely to be sold? The answer is obvious. Broker Zwerik is guilty of unethical conduct.

In addition, keeping a listing off a listing service reduces the likelihood of a sale. Even for a highly salable listing, it is unethical because it is not in the best interest of Zwerik's client. Zwerik clearly misrepresented the reason to exclude other agents. The owner could have a cause of action against Zwerik.

Case Example 4

Mr. and Mrs. Jones and their two small children call your office inquiring about a three-bedroom condominium that you have advertised for sale. The unit is in a six-unit complex and is four years old. While you had intended to show the prospective buyers other units as well, it's love at first sight and they want to buy the unit advertised. You know that Tom Sinn lives in the unit next to the unit that is for sale. Sinn's well-publicized child molestation conviction was recently set aside by a higher court that ruled the photos taken from Sinn's home were illegally obtained and should not have been allowed admissible as evidence. What should you do?

Analysis 4

Because the conviction was set aside, Sinn is not a convicted sex offender, so even if the buyers checked the Megan's Law website, they would not learn of the allegations made against Sinn.

You have a duty to disclose any detrimental information you know of concerning a property. There is no question that a buyer who has small children would consider this information detrimental.

To fail to inform Mr. and Mrs. Jones about their next-door neighbor could subject their children to danger. Application of the Golden Rule would require disclosure, even though disclosure may not be required by law. Even if the prospective buyers had no children, it's possible that visitors might.

There is another problem as to the agent's duty to the owners. The owners must be told if you will be disclosing information as to the neighbor and why. Because disclosure might materially affect the chances of a sale or the sales price, you should consider offering the owners the opportunity to cancel the listing.

Case Example 5

Salesperson Garcia was contacted by a representative of an organization for the developmentally disabled. The representative was looking for a group home with at least five bedrooms on a large lot. Checking the multiple listings, Garcia discovered that three homes were available that met the location, price, and size criteria of the organization. One of these homes was on the same block as the home of Garcia's broker, Douglas LaRue. Garcia contacted LaRue, who told her to show

the other two homes to her prospect but not the home on his block because he thought he had a buyer for it. What ethical issues are raised by this case?

Analysis 5

Garcia should have treated the prospective buyer as any other buyer. By contacting her broker before she showed the properties, Garcia was, in effect, saying, “What do I do if they want to live near you?” She was assuming that these citizens should be treated differently from other buyers, for example, a large family looking for a large house. Garcia’s conduct does not pass the test of the Golden Rule.

If broker LaRue did not want the house shown because he felt that it could take away a sale he was going to make, then LaRue is not treating Garcia fairly. The Golden Rule would seem to dictate that until sold, everyone should have an equal opportunity to sell it. There is also an ethical problem as to the owner in that LaRue is withholding a potential buyer from the property. It is in the owner’s best interests that the property be available to all prospective buyers.

If Broker LaRue directed that the home on his block not be shown because he believed that the presence of developmentally disabled citizens would be a detriment to the neighborhood, it would clearly be unethical because he is willing to locate them close to someone else and to profit on the sale. This certainly would not pass the test of the Golden Rule.

LaRue and Garcia were likely in violation of the 1988 Amendment to the Civil Rights Act of 1968 in discriminating against the disabled by refusing to tell the organization about an available home they knew could meet the buyer’s needs. This action also could be considered steering.

Case Example 6

Henrietta Jackson, a single African American woman, inquired about an apartment with a For Rent sign. The manager showed her a vacant three-bedroom, two-and-a-half-bath unit. The manager told her the rent was \$1,850 per month. She was told to think it over, and if she decided that she wanted the apartment, she should contact the manager, who would give her a rental application.

Gomer Clyde, a single white male, inquired about apartments one hour after Henrietta Jackson left. He was shown the three-bedroom apartment, which he was told was the only current vacancy. He was informed that in four days a studio apartment would be available at \$700 per month and a one-bedroom apartment would be available in about 40 days for \$1,100 per month. The manager took Clyde back to her office, where she showed him diagrams of the floor plans of the two additional apartments.

She asked Clyde which of the three apartments best met his needs. When Clyde indicated that he liked the studio apartment best, the manager handed him an application and said, “Fill out this application now and give me a deposit check

for \$100. I will call you tomorrow to let you know if your application has been approved.” Is there a problem with the actions of the manager?

Analysis 6

It appears that the apartment manager violated the Unruh Act (discrimination by a business), the Rumford Act, probably the Civil Rights Act of 1866, certainly the Civil Rights Act of 1968, and the Commissioner’s Regulations.

The two prospective renters were treated differently. Whether the discrimination was because she was a single woman or because she was African American, Jackson was discriminated against. It was illegal as well as unethical. While Jackson was not denied a rental, she was also not told about upcoming vacancies that would better meet her needs. This information was volunteered to Clyde, a single white male.

Jackson was told to think about the unit and contact the manager about a rental application if she was interested. The manager not only did not try to sell her on the units, but the manager’s conduct was likely to discourage a rental application. On the other hand, the manager used good sales techniques to get Clyde to submit an application and pay his deposit on the first visit.

While the discrimination in this case is certainly subtler than that encountered by African Americans and single women in the past, disparate treatment is still discrimination.

Case Example 7

A country home had been the scene of horrible crimes by a serial murderer that had drawn national attention. The home had been boarded up for a number of years, but the present owner had just finished decorating the home and had placed it on the market through your firm. Your broker tells all the agents, “The law does not require disclosure of a death from any cause,” implying that the crime need not be mentioned to prospective buyers.

You show the house to a family that is moving to the area due to a job transfer. They have three small children, and they love the huge yard and bright and cheery rooms. Because of the very reasonable list price, they want to put in an offer right away. What do you do?

Analysis 7

This is an example of “when in doubt—disclose.” While California law does not mandate a disclosure, place yourself in the shoes of the buyers. Consider how it would affect your peace of mind as well as that of your children (if any) when you learned the history of the house. The application of the Golden Rule clearly indicates that while nondisclosure is legal, in this case it may be unethical.

If you were acting as a buyer’s agent or dual agent, you would have a moral duty to disclose what would be regarded by most buyers as material information.

The owner should have been informed at the time of listing that your office would disclose the crime to any prospective buyers before an offer was taken. The broker's action seemed to encourage nondisclosure by relying on the letter of the law. In this case, such action appears unethical.

Case Example 8

Henry Shibata of Shibata Realty managed a small commercial building in a stable neighborhood of middle-class homes. The building had been vacant for more than six months, and the owner was concerned about the loss of income.

Shibata received a deposit and a lease from Ms. Corcoran, who wished to lease the building for 10 years. The rent specified was higher than the rent being asked for the property. Shibata knew that Corcoran was one of the largest owner/operators of adult bookstores in the region. The lease provision regarding use read "any legal purpose." An adult bookstore was not in violation of the current zoning codes, although there were no such stores within a 3-mile radius of the property. What should Shibata do?

Analysis 8

Shibata must inform the owner about the lease and about the proposed tenant. He can point out that the presence of an adult bookstore might create a great deal of animosity toward the owner, as well as have a possible negative effect on area property values.

If Shibata believes the lease would be detrimental to the community and the owner wants to accept it, an ethical approach would be to ask to be relieved from the management contract. However, if he believes that even though the presence of the business would hurt the area, First Amendment rights of free speech should be paramount and Corcoran should not be stifled, then handling the lease would be ethical conduct.

Case Example 9

The best friend of broker Kritski was Timothy Plunk, a home inspector. Plunk was well qualified as an inspector and had an excellent reputation. Kritski customarily recommended Plunk to buyers, telling them only that he regarded Plunk as being extremely competent. Kritski's buyers were pleased with Plunk.

Every Christmas, Kritski and Plunk exchanged gifts. Plunk would give Kritski a case of his favorite single-malt Scotch whisky, and Kritski would give Plunk a tie. Is there any ethical problem with their relationship?

Analysis 9

There is nothing unethical about recommending a friend for services; however, the close personal relationship should have been revealed. A buyer might feel that the friendship could influence what the inspection disclosed.

The apparent disparity in the value of the gifts exchanged creates, at the very least, an appearance of a kickback for recommending Plunk. The broker should have realized this and either refused the gift or increased the value of his gift to negate the disparity in value. As presented, it appears to be both unethical and illegal conduct.

Case Example 10

Broker Esposito has his office in the small town where he lives. The local high school recently was destroyed by fire. Because the structure was supposed to be “fireproof,” the school board had no insurance on the structure. The students are now being bused to five other community high schools. The bus rides for the students range from 40 minutes to almost two hours each way.

A special bond election is coming up for a citizens’ vote to provide funds for a new high school. The additional tax burden on the largely low-income and middle-income residents will be significant. Esposito has talked to several retirees who have indicated that they will have to sell their homes and move elsewhere if the bond passes.

The local real estate association has asked for a vote to assess members a special fee to fight against the bond issue because it feels the issue will depress local property values, cause people to move to nearby lower-taxed communities, and increase residential and commercial vacancies. Esposito voted to assess members and to fight the bond issue. Were his actions ethical?

Analysis 10

This case is unusual because a vote either way could be ethical or unethical, based on the reasons for the vote. If Esposito’s vote were based on the fact that a bond issue would personally hurt his business, although he believed it was necessary for the long-term growth of the community, then his vote would be ethically wrong. If he voted for the assessment because he felt that the damage to retirees and the community as a whole outweighed having a community high school and the long bus rides, then such a vote would be ethically correct.

Similarly, if Esposito had opposed the assessment, the ethics of his opposition would be based on his reasons. As an example, if Esposito believed the bond issue would be bad for the community and create hardships far beyond the benefits but favored a bond because he had nine children in school, then his decision would be self-serving, and voting against the assessment could be unethical. Esposito could also have ethically voted against an assessment or bond position based on the belief that the real estate association should not be involved in local political decisions.

Case Example 11

LaMont, a mortgage broker, has 14 licensees working at his firm. Most of the loans arranged by LaMont are with a particular institutional lender. The lender currently

requires that the borrower pay one point to obtain the quoted rate. LaMont is allowed to keep any overage that he is able to obtain. LaMont splits the overage equally with his salespeople. To determine how he could maximize income, LaMont analyzed loans arranged over the past six months. He discovered that points paid by borrowers varied by race. LaMont's results indicated the following:

- Caucasians = 1.17 points
- Mexican Americans = 1.62 points
- African Americans = 1.73 points

Do these results indicate any ethical problems?

Analysis 11

From the facts, it appears that LaMont's staff is targeting minorities and less-affluent borrowers for disparate treatment. They appear to be taking advantage of these borrowers by quoting and insisting on more points than others are paying. Apparently, LaMont's employees are taking the position that "we will get what the market will bear."

A person applying for a loan would ordinarily believe that the terms quoted are the same for everyone and are not based on race or other factors. The fact that this is not a level playing field does not pass the test of the Golden Rule. Obtaining a loan should not be like buying a used car. Buyers of used cars know that everything is negotiable. Most borrowers wrongfully believe that they are required to pay what is quoted. Borrowers could assume that the loan officer is acting for them in an agency capacity. The borrower could have a cause of action against the loan broker as to a breach of an implied agency. While the agents' intent may not have been to discriminate, that is the result.

Case Example 12

Broker Thall owns Thall Mortgage Company. About 20% of his loans failed to close because of appraisals that were significantly below the purchase prices. The broker for Big Realty Company, which gave Thall Mortgage Company about one-half of its business by referrals, told Thall that the appraiser would have to do better or he would find a more cooperative mortgage company.

Thall told his appraiser, Adam Fine, that appraisals had to more realistically reflect the marketplace. There were too many appraisals below the purchase prices. Fine told Thall that what a single buyer was willing to pay did not change the fair market value. He indicated that he had data to strongly support all of his valuations and had followed the *Uniform Standards of Professional Appraisal Practice (USPAP)*.

Thall stopped using Fine and now uses Willard Fast for the appraisals. For 132 appraisals over the past two-year period, not one came in under the contract purchase price. What, if any, are the problems in this case?

Analysis 12

The broker for Big Realty acted unethically in trying to induce Thall to act in an unethical and illegal manner. Thall and the broker for Big Realty violated Section 2785 of the Real Estate Commissioner's Regulations as well as federal laws that prohibit a real estate licensee from improperly influencing or attempting to influence a real estate appraiser. Big Realty also disregarded the interests of its buyers. (If there were a buyer agency or dual agency, they would have breached that agency to the buyer.)

In trying to influence Fine, Thall was encouraging appraisals related to contract prices, not necessarily fair market value. This could be a fraud on both the borrower and the lender, who would be led to believe that the appraisal fairly reflected fair market value. If the lender were federally insured, it would be a federal crime. Foreclosures could result in lender losses because of inflated appraisals and loans.

Willard Fast apparently understood the game that was being played and had agreed to do what was expected of him instead of following the USPAP.

The lender could be in danger if the buyer's equity was less than indicated by the appraisal.

SUMMARY

Ethics is fair and honest dealing.

Ethics differs from the law because the law sets minimum standards of acceptable conduct, whereas ethics deals in what is right. The test for determining whether an action is ethical is the Golden Rule.

The National Association of REALTORS® and the National Association of Real Estate Brokers have developed ethical codes to promote professionalism in the real estate industry.

Federal fair housing legislation began with the Civil Rights Act of 1866, which applied to racial discrimination. The Civil Rights Act of 1870 reiterated the 1866 act. The Civil Rights Act of 1964 elevated a 1962 executive order into law. The act prohibited housing discrimination when there was any government assistance or involvement. The Civil Rights Act of 1968 expanded discriminatory protection to include national origin, color, and religion, as well as race. By amendment, the act was extended to sex, physical handicaps, and familial status. The act specifically prohibits steering (that is, directing persons to housing based on race), blockbusting (obtaining listings or sales based on the fear of loss in value because minority group members are entering the area), and redlining (refusing to loan within a certain area).

The Americans with Disabilities Act requires that owners and operators of places of public accommodations make the premises accessible to the extent readily achievable.

Diversity training programs aid licensees in understanding the customs and culture of other peoples, as well as the motivations in their decision-making processes. The National Association of REALTORS® has developed a diversity training program.

The Unruh Act is a California act that prohibits discrimination by a business establishment. The Rumford Act is considered California's fair housing act.

The Holden Act prohibits financial institutions from engaging in discriminatory practices, and the California Business and Professions Code and the Real Estate Commissioner's Rules and Regulations provide details regarding discriminatory practices of California real estate licensees. The Omnibus Housing Nondiscrimination Act makes all California nondiscrimination acts consistent in coverage with the California Fair Employment and Housing Act.

You must be cognizant of the fact that what you regard as innocent conduct could be regarded by others as sexual harassment. You should always conduct yourself in a businesslike manner. An allegation of sexual harassment could be expensive in dollars and time.

Explicit discrimination is conscious discrimination, while implicit discrimination is unconscious. There are tests to evaluate a person's implicit discrimination and methods for overcoming the discrimination.

The Sherman Antitrust Act prohibits brokers from price-fixing, using a group boycott, and engaging in tie-in sales.

Trust funds must be protected and kept separate from broker funds. Records must be kept for each beneficiary and transaction.

CLASS DISCUSSION TOPICS

(Note: Your instructor may suggest role-playing for several of these topics.)

1. Without giving names, discuss any ethical problems you have observed relating to real estate.
2. You have just brought in a cash deposit for which your broker gives you a receipt. Later, you find a duplicate cash deposit slip on the floor for that exact amount for deposit into a personal account of your broker. What should you do?
3. Salesman Rutkowski was showing a couple homes in a beautiful subdivision. Rutkowski took a route to the property that added 3 miles to the trip in order to avoid driving through a racially mixed housing area that contained many structures in need of repair. Discuss the ethics of Rutkowski's actions.
4. Broker Shimato was handling the grand opening of Big Town Estates. To emphasize the desirability of the property, Shimato sent out a press release indicating that 71 of the 400 homes to be built were sold before the grand opening. At the grand opening, the model of the subdivision

showed sold flags on a large number of sites. Actually, Shimato had only three advance sales. Analyze Shimato's actions from an ethical standpoint.

5. Salesperson Sven Petersen took a listing for \$425,500, although his comparative market analysis indicated a sales price between \$295,000 and \$310,000. Peterson's broker, Olaf Petersen, told Peterson to "start working on the owner to reduce the price." He told Peterson, "It isn't a good listing now, but it will be one in a few months. Anyway, any listing is better than no listing." Discuss ethical problems raised by this case, if any.
6. In Britain, the National Association of Estate Agents (a real estate professional organization) considers it an unethical practice to contact bereaved relatives of a deceased person in order to obtain a listing. Do you agree? Why?
7. Billie Bob Smith built a model home for his new subdivision. His newspaper ads showed an artist's rendering that made the home appear much larger than it was. In small letters the ad stated "Not to Scale." The price printed next to the drawing was \$289,500. The small asterisk at the bottom of the page said "Plus Lot." The model itself, which had a sign that said "From \$289,500," included upgraded carpets, tile, cabinetry, landscaping, patio, et cetera. If a prospect wanted a home just like the model, the price would be \$370,450 plus a lot starting at \$140,000. Discuss the ethical problems, if any, of Smith's advertising and model home.
8. You are presenting an offer to owners represented by another agent. The offer requires that the owner carry back a second trust deed for \$209,000. The other agent tells the owner that the buyer has "ace-high credit, and he has an excellent employment history." You are the selling agent, and you know from prequalifying the buyer that he has had prior credit problems owing to a lengthy period of unemployment; however, he has been working steadily for the past two years and is now up to date on all payments. What should you do?
9. While on caravan viewing new listings, you see another agent from your office, who is a close friend, slip a small Dresden figurine into her purse. What should you do?
10. Figure 2.5: Top Enforcement Violations is a list of the most common real estate licensee violations. Which of these reasons are clearly unethical and which could be ethical?
11. Give an example of a broker violation. Using Figure 2.5, what code section was violated?
12. A family of four applies to rent your available three-bedroom apartment. They check out financially, but from a check with their present landlord, you find out their 11-year-old daughter has Tourette's syndrome and has episodes of uncontrolled swearing. You tell the applicants you have rented the unit to another applicant. When the refused applicants find out you are continuing to advertise the unit for rent, they are irate and threaten to sue. What should you do?
13. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

FIGURE 2.5: Top Enforcement Violations

The following is a list of the top violations of the real estate law that are filed by the Department of Real Estate against real estate licensees. All references refer to sections of the California Business and Professions Code and the Regulations of the Real Estate Commissioner.

1. Trust Fund Record Keeping

Section 10145 – General statute governing the handling of trust funds. Regulation 2831 – Maintaining columnar records for trust funds received. Regulation 2831-a – Maintaining separate records for each beneficiary. Regulation 2831.2 – Performing monthly reconciliation of trust fund accounts.

Regulation 2834 – Allowing unlicensed and unbonded signatories on a trust account.

2. Trust Fund Shortages

Section 10145 – General statute governing the handling of trust funds. Regulation 2832 – Trust fund handling.

Regulation 2832.1 – Trust fund shortages.

3. Failure to Supervise

Section 10177 (h) – Failure to reasonably supervise activities of salesperson.

4. Unlicensed Activity Violations

Section 10130 – Act as a real estate licensee without first obtaining a license.

Section 10137 – Unlawful employment or payment to unlicensed individual or salesperson not employed by broker.

5. Misrepresentation Violations

Section 10276-a – Substantial misrepresentation in a real estate transaction in which a license is required.

UNIT QUIZ

1. Three brokers agreed that they would not let a third broker show any of their listings. This action would be regarded as
 - a. a group boycott.
 - b. price-fixing.
 - c. market allocations.
 - d. a tie-in agreement.
2. The relationship of ethics to law is that
 - a. if an act is illegal it is also unethical.
 - b. ethics tends to precede the law.
 - c. ethics and the law both set minimum standards for behavior.
 - d. what is ethical is legal.
3. Which of the following phrases would be considered nondiscriminatory in an advertisement for a rental?
 - a. Christian family
 - b. Prefer working married couple
 - c. Just two blocks to St. Michael's
 - d. None of these
4. A broker with a disabled employee widened the doorway to the restroom to accommodate a wheelchair. This work was performed to comply with the
 - a. Civil Rights Act of 1866.
 - b. Americans with Disabilities Act.
 - c. Rumford Act.
 - d. Fair Housing Amendment Act of 1988.
5. The Civil Rights Act of 1866 specifically covers what type of discrimination?
 - a. Sex
 - b. Marital status
 - c. Age
 - d. Race
6. A broker showed African American prospective buyers homes in African American and racially mixed neighborhoods. He would show African American prospects homes in predominantly Caucasian areas only if the prospects specifically requested to see homes in those areas. The broker's action would be described as
 - a. illegal.
 - b. unethical.
 - c. steering.
 - d. all of these.

7. A broker refused to show a young Hispanic family of five a condominium about which they had inquired. The broker's action would be proper if
 - a. the broker considered the unit too small for the family.
 - b. there were no other children in the development.
 - c. the development has an age exemption because all occupants are 55 years of age or older.
 - d. 70% of the units are occupied by elderly.
8. A landlord can properly refuse to accept an applicant because the applicant
 - a. has a guide dog and the apartment is on the fourth floor.
 - b. is a single but obviously pregnant woman.
 - c. appears to be gay and the landlord is afraid of catching AIDS.
 - d. None of these
9. The state act that specifically prohibits discrimination in business establishments is the
 - a. Unruh Act.
 - b. Rumford Act.
 - c. Holden Act.
 - d. Civil Rights Act of 1968.
10. Which of the following actions dealing in trust funds would be a violation of the law?
 - a. Giving trust funds received to a principal
 - b. Placing depository trust funds directly into escrow
 - c. Placing trust funds in a trust account
 - d. Placing trust funds in the personal care of a bonded employee

3

UNIT THREE



MANDATORY DISCLOSURES

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- explain fiduciary- and agency-related disclosures, real estate transfer disclosure, agent's inspection disclosure, and natural and environmental hazards disclosures;
- describe subdivision and common interest development disclosures; and
- explain financing-related and other mandatory disclosures.

KEY TERMS

adjustable-rate loan disclosure	fire hazard areas	public report
advisability of title insurance	FIRPTA	Real Estate Transfer Disclosure Statement (TDS)
agency	flood hazard areas	red flag
agency disclosure	Gas or Hazardous Liquid Transmission Lines Disclosure	rescission rights
Agent's Inspection Disclosure	hazardous waste disclosure	renter notice of foreclosure
associate licensee	Home Energy Rating System (HERS)	Residential Earthquake Hazards Report
blanket encumbrance disclosure	home inspection notice	seller's agent
brownfields	homeowners association	seller financing addendum and disclosure
buyer's agent	<i>Homeowner's Guide to Earthquake Safety</i>	septic system disclosure
California Land Project	industrial/airport disclosure	sick building syndrome
carbon monoxide detector notice	Integrated Closing Disclosure	single agency
common interest subdivision	interstate land sales	smoke detector disclosure
Condominium Conversion Notice	landslide inventory report	stigmatized property
Consumer Caution and Home Ownership Counseling Notice	lead-based paint	structural pest control inspection
controlled business arrangement	Loan Estimate	Subdivided Lands Law
designated agent	material facts	TILA-RESPA Integrated Disclosure rule
dual agency	Megan's Law	toxic mold
<i>Easton v. Strassburger</i>	Mello-Roos bonds	Truth-in-Lending Disclosure
elder abuse law	methamphetamine contamination order	undivided interest subdivision
Environmental Hazards Disclosure	military ordnance location	vicarious liability
facilitator	Mining Operations Notice	water-conserving fixtures
farming area disclosure	Mortgage Loan Disclosure Statement	water heater bracing
fiduciary responsibility		window security bars

UNDERSTANDING DISCLOSURES

Real estate agents used to say that the three main factors in real estate were “location, location, location.” Today, they are “disclosure, disclosure, disclosure.” Although the concept of *caveat emptor*, or “let the buyer beware,” has been around for centuries, in the past several decades, California legislators, courts, and the Department of Real Estate (DRE) have been pushing enactment of disclosure laws. Although many agents think these laws are new, in reality, real estate law has always stressed full disclosure. However, in the past, some agents did not understand what full disclosure meant or when it was necessary to disclose certain circumstances. As a result, buyers and sellers began to take agents to court for non-

disclosure. Such court cases became so numerous in certain areas that California legislators and the DRE worked to enact laws and regulations to force agents to disclose certain items. These laws and regulations have led to increased paperwork for real estate transactions, so agents must be familiar with all aspects of disclosure to complete transactions properly.

The disclosure laws discussed in this unit primarily involve 1–4-unit residential real property. Commercial buyers have been deemed to be more sophisticated than buyers of residential real estate. Therefore, many of the disclosures that a home-buyer would get are absent from a commercial transaction. Also, the information given here is general in nature. In situations involving specific facts, consult your attorney concerning your specific case. To help avoid future disputes and litigation, always disclose the issue in question.

A material fact is any fact that, if disclosed, could affect the decision of an entity in completing the transaction.

Full disclosure means disclosing, or giving notice of, all **material facts** in a transaction. A *material fact* is any fact that, if disclosed, could affect the decision of an entity (person or persons) in completing (to buy, to sell, etc.) a transaction. Many facets of a property might need to be disclosed to a prospective seller, buyer, or borrower to complete a transaction legally and to secure the financing necessary to purchase the property. The disclosure laws impose obligations not only on real estate licensees but also on the principals to the transaction. This is why the agent must consider all the material facts.

Full disclosure will

- protect the principals (buyers and sellers),
- establish and build trust and confidence between the licensee and principals, and
- satisfy the law.

The agent must not only disclose the information but also make certain that the principal understands the information and the importance of the information disclosed. Disclosures should be in writing to protect all parties involved.

Certain disclosures are mandated. A *mandated disclosure* is an item of information required by law to be conveyed from one entity involved in a real estate transaction to another entity in the same transaction. *Information* means some type of material data, facts, news, or figures. The phrase *required by law* means some obligation imposed by a legal authority, such as the DRE, the state legislature, or a court. *Convey* means to present from one entity (person or persons) to another entity. Thus, a mandated disclosure is simply a material fact obligated by law to be disclosed.

While the latest California Association of REALTORS® forms, as well as the forms from other California forms publishers, provide for most mandatory disclosures, outdated forms (as well as forms produced for national use) can result in a failure to properly disclose. You are not excused from disclosure because a form you used did not include or reference the disclosure.

Disclosure obligations in residential real estate sales of 1–4-unit properties are many and varied. Some are mandatory for real estate agents, some for sellers, some

for both licensees and principals. At times, every agent will be in doubt about exactly what to disclose. The general rule is, “When in doubt on a particular issue, always disclose.”

FIDUCIARY RESPONSIBILITY AND DISCLOSURES

An agent is one who represents another. When a principal appoints an agent, the principal assumes **vicarious liability** for the act of the agent within the scope of the agency. Of course agents would also be liable for their wrongful or negligent acts. The agency relationship demands that the agent use best efforts to protect the interests of the principal and to carry out the agency responsibilities.

When a real estate broker acts as an agent of only the seller or only the buyer, this is called a **single agency**. The **dual agency** may be used only if the buyer and the seller are both aware of the situation and approve of the arrangements. In many states, dual agency is not allowed because of the problems inherent in conflicting interests. Although this type of agency is in common use in California, many attorneys look on this arrangement as a conflict of interest ripe for lawsuits. Real estate agents often carry errors and omissions insurance to help protect against this problem. An agent who represents both the buyer and the seller without the approval of both is guilty of an undisclosed *divided* or dual agency and is in violation of the real estate law (Business and Professions Code 10176(d)).

An agent’s **fiduciary responsibility** to the principal is one of *trust*. The duties include the following:

- Loyalty
- Obedience
- Confidentiality
- Disclosure
- Accounting

The agent must be *loyal* to the principal, placing the principal’s interests above those of the agent. An agent’s actions, therefore, cannot be inconsistent with the principal’s interests. The agent cannot act in a self-serving manner to the detriment of the principal. As an example, assume a buyer’s agent, in seeking a property for a buyer, discovered a property meeting the buyer’s needs that was bargain priced. If the broker purchased the property to resell at a profit, the broker would be competing with the principal. This would be a breach of fiduciary duty.

Fiduciary duty is one of good faith and trust.

In dual agency situations, caution must be exercised so that aiding one principal is not detrimental to the other principal.

One duty of the agent to the principal is *obedience*. The agent must obey the principal’s *lawful directions*. A principal direction to discriminate or fail to disclose a material fact could not be followed, and the principal should be so advised. These are not lawful directions. Agents also have a duty of *skill* and *diligence* and must diligently exercise their skills in the performance of agency duties.

Their duty of trust prohibits agents from revealing confidential information about the principal to others without the consent of the principal. For example, if a seller's agent revealed to a prospective buyer, without the principal's permission, that the principal was in serious financial straits, the agent's action would be a violation of the duty of trust. This information could seriously reduce the principal's bargaining ability. It could also encourage an offer at a lower price than was originally intended. Similarly, a buyer's agent could not inform a seller that the buyer had a particular need for the seller's property or that the buyer considered the seller's asking price to be extremely low.

The fiduciary duty of the agent includes full disclosure of material facts discovered by the agent that the principal would reasonably want to know in making decisions. Full disclosure would likely include the duty to warn a principal of any known dangers, such as possible problems relating to an offer, a lease, or an option. It also includes a duty to fully and honestly convey information concerning value and market conditions. Again, if there is any doubt as to the material nature of information, disclose.

An agent of a seller would not have a duty to tell a buyer that the agent would receive a greater commission or a bonus if the agent were able to sell a particular property, but if the agent were a buyer's agent, then such a disclosure would be required because failure to do so could create the appearance of a conflict of interest. It is a material fact that the buyer, as principal, would want to know.

The agent must account for all monies received and disbursed. Reasonable records must be kept.

For one- to four-unit residential properties, you have an actual duty to conduct a reasonably diligent visual inspection of the property. (See *Agent's Inspection Disclosure* later in this unit.) While the law does not require a visual inspection for other than one- to four-unit residential properties, you still have a duty to disclose known detrimental information to the buyer.

The listing agent has a duty to conduct a diligent visual property inspection.

Duty to Other Party (Nonagency)

When dealing with third parties, you are not held to the degree of fiduciary duties to a principal; nevertheless, you have duties of fairness, honesty, and disclosure. You must disclose to the buyer any detrimental information you know concerning a property that might affect its value or desirability to the buyer.

If you realize a buyer is mistaken about a property, you have a duty to let the buyer know the facts. Suppose, for example, that a buyer indicates he wants a site for an automobile repair facility. If you know that the current zoning precludes this use, you have a duty to inform the buyer about the zoning restriction.

If you have knowledge of a problem concerning the property before an offer, your disclosure must be made before the purchase offer. Your duty of disclosure, however, extends beyond the offer and acceptance of the offer. As an example, if you

discover a serious structural problem after acceptance of an offer, you have a duty to inform the buyer, as well as the owner, of the problem.

Facilitators and Designated Agents

When dealing with a broker in another state, California agents should understand that there could be differences in types of agency relationships and duties. Though not allowed in California, real estate brokers in some states are allowed to work as facilitators or intermediaries. These are third parties who are not agents of either the buyer or the seller; instead, they assist the buyer and the seller in the transfer of real property ownership. They do, however, have a duty to treat all parties fairly and must disclose known defects in a property.

A number of states allow a broker to designate one salesperson as a principal's sole agent. When the listing broker is also the selling broker, the selling salesperson would then be the buyer's sole agent. An advantage of the **designated agent** concept lies in the fact that it is used to avoid problems often associated with conflicting duties of dual agency. Both buyer and seller have separate agency representation. However, both agencies are under the supervision of a single broker, so an appearance of a conflict of interest is still present. This type of agency relationship has not been adopted in California.

AGENCY DISCLOSURE

Civil Code Sections 2373–2382, which deal with agency relationships in real estate transactions (sales and leases over one year) involving 1–4-unit residential properties, became law on January 1, 1988. Any licensee in a transaction involving residential real property of 1–4 units (including mobile homes) must disclose agency. In 2015, mandatory written agency disclosure was extended to commercial transactions. Agents must disclose their exact agency role in all transactions.

To understand **agency disclosure**, brokers and salespersons must understand the term *agency*. An agent is one who represents another, called the **principal**, in dealings with a third person or persons. Such a representation is called agency. The agency disclosure form defines agency as

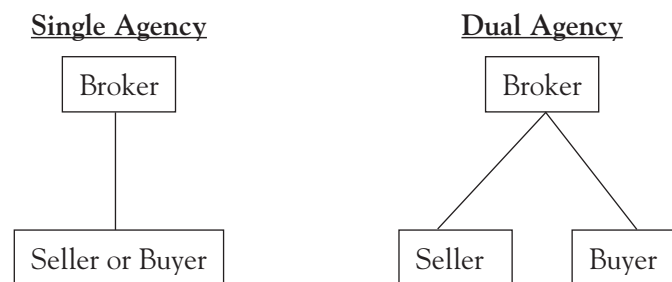
a person acting under provisions of this title in a real property transaction, [including] a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business & Professions Code, and under whose license a listing is executed or an offer to purchase is obtained.

The word *agent* is synonymous with *employing broker*. Though it is common in the real estate industry for salespeople to call themselves *real estate agents*, it is important to understand that there is only one agent in a company, the real estate broker, and all agency comes under that person. The law now uses the term **associate licensee**, defined as a person who is licensed as a real estate salesperson under a broker. There is but one broker of record or responsible broker per company, and all associate licensees (salespeople) are **subagents** of that broker.

Brokers and salespeople should understand the various ways the word *agent* can be used in a real estate transaction. The licensee who lists the seller's home is called the *listing agent* or seller's agent. The licensee who brings the buyer into the transaction is called the buyer's agent or selling agent. An agent who represents the seller is called the **seller's agent**, and the agent who represents the buyer is called the **buyer's agent**. At one time, selling agents were considered subagents of the listing broker, so they represented the seller and the buyer had no representation. This has changed dramatically in that selling agents generally elect to solely represent the buyer.

As previously stated, when an agent represents only a buyer *or* a seller, it is considered a single agency, and when an agent represents both buyer *and* seller, it is known as a dual agency.

FIGURE 3.1: Explanation of Agency Disclosure




Some brokerage offices have elected single agency. *Single agency* means that they will represent the buyer or the seller but not both. Their reason is that they feel duties to both principals in a transaction can create the appearance of a conflict of interest. This can result in lawsuits because of the perception of the parties. Single agency, representing one party to the transaction, reduces the likelihood of misunderstandings.

While the listing agent for a property could be either a seller's sole agent or a dual agent, the selling agent could be a buyer's agent (representing the buyer alone), a seller's agent (representing the seller alone), or a dual agent (representing both buyer and seller) with the knowledge and consent of both.

Even in a large company with multiple offices, there still is only one broker. For example, Bigtime Real Estate Company has an office in Los Angeles and another in San Francisco. If the agent from the Los Angeles office lists a property for sale and the agent from the San Francisco office brings in a buyer, whom does each agent represent or owe a fiduciary responsibility to? Does the listing agent exclusively represent the seller, and the selling agent exclusively represent the buyer? The agents are under the same employing broker (agency), so either both agents represent the seller or both agents represent both the seller *and* the buyer (dual agency).

Note: An agent (broker), however, is supposed to get the best and most honest deal for his principal. In a dual agency situation, the agent is compelled to obtain the highest price and best terms for the seller and also the lowest price and best terms for the buyer. In court, it is often hard to convince the jury that a dual agent has accomplished that. This is why full disclosure is extremely important.

FIGURE 3.2: Agency Law Disclosure



AGENCY LAW DISCLOSURE

Disclosure Regarding Real Estate Agency Relationships

For Negotiating the Sale or Exchange of Real Estate

Prepared by: Agent _____
Broker _____

Phone _____
Email _____

NOTE: This form is used by agents as an attachment when preparing a listing agreement, purchase agreement or a counteroffer on the sale or exchange of residential property, commercial property, raw land or mobilehomes, to comply with agency disclosure law controlling the conduct of real estate licensees when in agency relationships. [Calif. Civil Code §§2079 et seq.]

DATE: _____, 20____, at _____, California.

TO THE SELLER AND THE BUYER:

1. FACTS: When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

2. SELLER'S AGENT: A Seller's Agent under a listing agreement with the Seller acts as the Agent for the Seller only. A Seller's Agent or a subagent of that Agent has the following affirmative obligations:

2.1 To the Seller:

a. A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

2.2 To the Buyer and the Seller:

a. Diligent exercise of reasonable skill and care in performance of the Agent's duties.

b. A duty of honest and fair dealing and good faith.

c. A duty to disclose all facts known to the Agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of the parties.

2.3 An Agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

3. BUYER'S AGENT: A Buyer's Agent can, with a Buyer's consent, agree to act as the Agent for the Buyer only. In these situations, the Agent is not the Seller's Agent, even if by agreement the Agent may receive compensation for services rendered, either in full or in part, from the Seller. An Agent acting only for a Buyer has the following affirmative obligations:

3.1 To the Buyer:

a. A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

3.2 To the Buyer and the Seller:

a. Diligent exercise of reasonable skill and care in performance of the Agent's duties.

b. A duty of honest and fair dealing and good faith.

c. A duty to disclose all facts known to the Agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation, of the parties. An Agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

4. AGENT REPRESENTING BOTH THE SELLER AND THE BUYER: A Real Estate Agent, either acting directly or through one or more salespersons and broker associates, can legally be the Agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

4.1 In a dual agency situation, the Agent has the following affirmative obligations to both the Seller and the Buyer:

a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

b. Other duties to the Seller and the Buyer as stated above in their respective sections.

4.2 In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

5. SELLER AND BUYER RESPONSIBILITIES: Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

6. The above duties of the Agent in a real estate transaction do not relieve a Seller or a Buyer from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A Real Estate Agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

7. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

8. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

9. Throughout your real property transaction, you may receive more than one disclosure form, depending upon the number of Agents assisting in the transaction. The law requires each Agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the Real Estate Agent in your specific transaction.

10. This disclosure form includes the provisions of §2079.13 to §2079.24, inclusive, of the Calif. Civil Code set forth on the reverse hereof. Read it carefully.

(Buyer's Broker) _____ Date _____

(Signature of Salesperson or Broker-Associate, if any) _____ Date _____

(Seller's Broker) _____ Date _____

(Signature of Salesperson or Broker-Associate, if any) _____ Date _____

(Buyer's Signature) _____ Date _____

(Buyer's Signature) _____ Date _____

(Seller's Signature) _____ Date _____

(Seller's Signature) _____ Date _____

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FIGURE 3.2: Agency Law Disclosure (continued)

- - PAGE 2 OF 2 — FORM 305

2079.13. As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

- "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained.
- The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions.
- b. "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property.
- c. "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29.
- d. "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction.
- e. "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement.
- f. "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation.
- g. "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent.
- h. "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property.
- i. "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller.
- j. "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code.
- k. "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase.
- l. "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration.
- m. "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property.
- n. "Buyer's agent" means an agent who represents a buyer in a real property transaction.

§2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows:

- a. The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement.
- b. The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

§2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

§2079.17. (a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively.

- b. As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.
- c. The confirmation required by subdivisions (a) and (b) shall be in the following form:

_____ [Do not fill out] _____ is the broker of (check one):
(Name of Seller's Agent, Brokerage firm and license number)

☐ the seller; or

☐ both the buyers

[Do not fill out]

(Name of Seller's Agent and license number)

☐ is the Seller's Agent. (salesperson or broker associate)

☐ is both the Buyer's and Seller's Agent. (dual agent)

_____ [Do not fill out] _____ is the broker of (check one):

(Name of Buyer's Agent, Brokerage firm and license number)

☐ the buyer; or

☐ both the buyer and seller. (dual agent)

[Do not fill out] is (check one):

(Name of Buyer's Agent and license number)

☐ the Buyer's Agent. (salesperson or broker associate)☐ both the Buyer's and Seller's Agent. (dual agent)

- d. The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

§2079.19. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

§2079.20. Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

§2079.21. (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller.

- b. A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer.
- c. "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered.
- d. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

§2079.22. Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

§2079.23. A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

§2079.24. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

Franchise offices are usually independently owned, with a different broker for each independently owned office. Thus, different agents from different offices may not be under the same agency (the same broker). Because the listing associate licensee is from a different office (different agency), the licensee can exclusively represent the seller, and the selling licensee can create an exclusive agency with the buyer. However, under the law of disclosing agency, all types of agency must be disclosed.

Any associate licensee who acts on behalf of others in selling, buying, exchanging, or leasing real estate creates agency for her broker (the agent).

An agent can receive a commission from a seller but still be the buyer's agent. Agency has nothing to do with who pays the commission (California Civil Code 2079.19). Buyer's agents customarily receive their compensation from the sellers.

Agency relationships can be either *implied* or *express*. Formalities are not necessarily required to create an agency relationship; the licensee can create an implied agency with a buyer or a seller simply through the words used when talking to prospective clients. For example, a court might determine that an implied agency is created when a licensee says to a buyer on the phone, "I have time today to look for property for your specific needs, to help you solve your housing problems." Agency can also be created by an express contract, such as a listing agreement. (See Unit 6.) Remember, once this agency relationship is created, the licensee has a fiduciary relationship with the principal. A fiduciary incurs the highest obligations under the law.

The Disclosure Process

The three-step process of disclosing agency can be remembered by using the acronym *DEC*.

Step 1: Disclose. This step will be in writing. Using a prescribed disclosure form (Figure 3.2), the licensee must educate the principal about the three different types of agents—seller's agent, buyer's agent, and dual agent—and how they operate. After this full disclosure, it is necessary to obtain the principal's signature. In dealing with consumers (buyers), the broker should educate the buyer about agency relationships as soon as possible, provide the potential buyer with the disclosure regarding agency relationships, and obtain the buyer's signature.

Step 2: Elect. In this step, the agent and the principal decide which type of agency will be used. Because circumstances can change with each transaction, it is imperative that the principal and the agent thoroughly understand the implications of the agency roles they agree on and elect. Nothing has to be signed in this step, but care must be taken that both principal and agent enjoy full understanding (disclosure) of the agency elected.

The three steps of the disclosure process are Disclose, Elect, and Confirm.

Step 3: Confirm. The confirmation of the type of agency elected in step 2 must be in writing. The agent and the principal(s) must sign the confirmation statement. Usually this confirmation is included as part of the purchase contract (also known as a *deposit receipt*), but it is also available as a separate document. If dual agency is elected, the agent must disclose that fact to both the buyer and the seller because a dual agent needs the consent of both. Because the broker is the agent, it is the broker's responsibility to make certain that proper disclosures have been made.

The selling agent should confirm the agency with the buyer, even if the buyer is not to be represented by an agent.

Timing of Disclosure

When should an agent disclose agency? The Department of Real Estate mandates disclosure "as soon as possible" when more than a casual relationship exists, and most offices have a policy manual that addresses the requirement of prompt disclosure. The three steps in the process may be taken at different times. Below are some general ideas on when to disclose, when to elect, and when to confirm.

Listing agents not selling their own listings. In these cases, agents should provide the disclosure to the seller before entering into the listing agreement, elect as soon as is practical, and confirm the agency before or coincident with the seller's acceptance of the purchase contract.

Listing agents selling their own listings (in-house). In this case, the agent should disclose (that she is either the seller's exclusive agent or a dual agent of both seller and buyer), elect, and confirm to the seller and the buyer as in the preceding transaction.

Selling agents working with a buyer. Selling agents who are not listing agents always should disclose as soon as is practical and before a buyer's making an offer. As above, they should also elect as soon as is practical and confirm before or coincident with a buyer's and a seller's execution of the purchase contract.

Selling agents working with a seller. Selling agents who are not listing agents should remember to disclose to sellers as soon as is practical. They should elect as soon as is practical and confirm before or coincident with a buyer's and a seller's execution of the deposit receipt.

REAL ESTATE TRANSFER DISCLOSURE

Under current law (California Civil Code Sections 1.102–1.102.14), the purchaser of residential real property (including residential stock cooperative housing) of four units or less is entitled to a **Real Estate Transfer Disclosure Statement (TDS)** from the seller. The term *transfer* refers to sale, exchange, real property sales contract (installment land sales contract), option, lease option, and so forth. Since January 1, 1987, any seller, whether represented by an agent or not,

has been required to give the buyer a written disclosure statement of the condition of the property. The disclosure statement must identify

- items in the home and whether these items are operational (part A);
- significant defects of the home, if any (part B); and
- all information regarding improvements and alterations, concerns with neighbors and the neighborhood, zoning, a homeowners association, and other possible problem areas (part C).

Seller Disclosure Exemptions


Exempted from disclosure are transfers

- requiring public report,
- pursuant to court order,
- by foreclosure,
- by a fiduciary,
- from one co-owner to one or more co-owners,
- between spouses or to a direct blood relative,
- between spouses in connection with a dissolution,
 - by the state controller,
- as a result of failure to pay property taxes,
- to or from any government entity (including exchanges), and
 - from probate.

Right of Termination

The disclosure statement should be delivered as soon as practical and before the execution of the offer to purchase. If the statement is not delivered before the execution, or is later amended, the buyer has the right to cancel the offer within three days after delivery (five days if mailed). To cancel the offer, the buyer must write a notice of termination and deliver it to the seller or the seller's agent. Failure to provide a transfer disclosure statement will not invalidate a closed transaction, but failure to comply could result in liability for damages. The transfer disclosure form is shown in Figure 3.3.

FIGURE 3.3: Condition of Property: Transfer Disclosure Statement (TDS)

	CONDITION OF PROPERTY Transfer Disclosure Statement (TDS)		
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border-right: 1px solid black; padding-right: 10px;"> Prepared by: Agent _____ Broker _____ </td> <td style="width: 50%; padding-left: 10px;"> Phone _____ Email _____ </td> </tr> </table>		Prepared by: Agent _____ Broker _____	Phone _____ Email _____
Prepared by: Agent _____ Broker _____	Phone _____ Email _____		
<p>NOTE: This form is used by the seller and their agent when marketing a one-to-four unit residential property for sale in compliance with mandated disclosures on the physical and environmental condition of the property, to provide prospective buyers as soon as possible on the commencement of negotiations with property information including known or suspected property defects affecting value.</p>			
<p>This disclosure statement is prepared for the following:</p> <p> <input type="checkbox"/> Seller's listing agreement <input type="checkbox"/> Purchase agreement <input type="checkbox"/> Counteroffer <input type="checkbox"/> _____ </p> <p> dated _____, 20____, at _____, California, entered into by _____, and _____, regarding property referred to as _____ _____ _____ _____ _____ _____ </p>			
REAL ESTATE TRANSFER DISCLOSURE STATEMENT			
<p>THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____ _____ _____ _____ _____</p>			
<p>THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 20____. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.</p>			
COORDINATION WITH OTHER DISCLOSURE FORMS			
<p>This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zones and purchase-money liens on residential property).</p> <p>Substituted Disclosures: The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:</p> <p> <input type="checkbox"/> Inspection reports completed pursuant to the contract of sale or receipt for deposit. <input type="checkbox"/> Additional inspection reports or disclosures: _____ _____ _____ _____ _____ </p>			

----- PAGE 1 OF 5 — FORM 304 -----

FIGURE 3.3: Condition of Property: Transfer Disclosure Statement (TDS) (continued)

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II

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER:

Seller ☐ is, ☐ is not, occupying the property.

A. The subject property has the items checked below (**read across**):*

- | | | |
|---|--|---|
| <input type="checkbox"/> Range | <input type="checkbox"/> Oven | <input type="checkbox"/> Microwave |
| <input type="checkbox"/> Dishwasher | <input type="checkbox"/> Trash compactor | <input type="checkbox"/> Garbage Disposal |
| <input type="checkbox"/> Washer/Dryer Hookups | | <input type="checkbox"/> Rain Gutters |
| <input type="checkbox"/> Burglar Alarms | <input type="checkbox"/> Carbon Monoxide Device(s) | <input type="checkbox"/> Fire Alarm |
| <input type="checkbox"/> TV Antenna | <input type="checkbox"/> Satellite Dish | <input type="checkbox"/> Intercom |
| <input type="checkbox"/> Central Heating | <input type="checkbox"/> Central Air Conditioning | <input type="checkbox"/> Evaporator Cooler(s) |
| <input type="checkbox"/> Wall/Window Air Conditioning | <input type="checkbox"/> Sprinklers | <input type="checkbox"/> Public Sewer Systems |
| <input type="checkbox"/> Septic Tank | <input type="checkbox"/> Sump Pump | <input type="checkbox"/> Water Softener |
| <input type="checkbox"/> Patio/Decking | <input type="checkbox"/> Built-in Barbecue | <input type="checkbox"/> Gazebo |
| <input type="checkbox"/> Sauna | <input type="checkbox"/> Water-conserving plumbing fixtures* | |
| <input type="checkbox"/> Hot Tub <input type="checkbox"/> Locking Safe Cover* | <input type="checkbox"/> Pool <input type="checkbox"/> Child Resistant Barrier* | <input type="checkbox"/> Spa <input type="checkbox"/> Locking Safe Cover* |
| <input type="checkbox"/> Security Gate(s) | <input type="checkbox"/> Automatic Garage Door Opener(s)* Number of Remote Controls: _____ | |

Garage: ☐ Attached ☐ Not Attached ☐ Door Opener(s)* ☐ Carport ☐ Not Attached
☐ Electrical vehicle charging station ☐ Separately metered

Pool/Spa Heater: ☐ Gas ☐ Solar ☐ Electric
 Water Heater: ☐ Gas* ☐ Private Utility or Other: _____

Water Supply: ☐ City ☐ Well
 Gas Supply: ☐ Utility ☐ Bottled (Tank)
☐ Window Screens ☐ Window Security Bars
☐ Quick-Release Mechanism on Bedroom Windows*

Exhaust Fan(s) in _____ 220 Volt Wiring in _____
 Fireplace(s) in _____ Gas Starter _____
 Roof(s): Type _____ Age: _____ (approx.)
 Other: _____

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ☐ Yes ☐ No.
 If yes, then describe. (Attach additional pages if necessary): _____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ☐ Yes ☐ No.

If yes, check appropriate boxes below.

- | | | | | | |
|---|-----------------------------------|-------------------------------------|---|-------------------------------------|------------------------------------|
| <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Ceilings | <input type="checkbox"/> Floor | <input type="checkbox"/> Exterior Walls | <input type="checkbox"/> Insulation | <input type="checkbox"/> Roof(s) |
| <input type="checkbox"/> Windows | <input type="checkbox"/> Doors | <input type="checkbox"/> Foundation | <input type="checkbox"/> Slab(s) | <input type="checkbox"/> Driveways | <input type="checkbox"/> Sidewalks |

----- PAGE 2 OF 5 --- FORM 304 -----

FIGURE 3.3: Condition of Property: Transfer Disclosure Statement (TDS) (continued)

----- PAGE 3 OF 5 — FORM 304 -----

☐ Walls/Fences ☐ Electrical Systems ☐ Plumbing/Sewers/Septics
☐ Other Structural Components (Describe): _____

If any of the above is checked, explain. (Attach additional pages if necessary): _____

☐ Addendum attached. [See RPI Form 250]

*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with Section 13260) of Part 2 of Division 12 of, automatic reversing device standards as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. Section 1101.4 of the Civil Code requires all single family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with Section 1101.1 of the Civil Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property..... ☐ Yes ☐ No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property..... ☐ Yes ☐ No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property..... ☐ Yes ☐ No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits..... ☐ Yes ☐ No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes..... ☐ Yes ☐ No
6. Fill (compacted or otherwise) on the property or any portion thereof..... ☐ Yes ☐ No
7. Any settling from any cause, or slippage, sliding, or other soil problems..... ☐ Yes ☐ No
8. Flooding, drainage or grading problems..... ☐ Yes ☐ No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides..... ☐ Yes ☐ No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements..... ☐ Yes ☐ No
11. Neighborhood noise problems or other nuisances..... ☐ Yes ☐ No
12. CC&Rs or other deed restrictions or obligations..... ☐ Yes ☐ No
13. Homeowners' Association which has any authority over the subject property..... ☐ Yes ☐ No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)..... ☐ Yes ☐ No
15. Any notices of abatement or citations against the property..... ☐ Yes ☐ No
16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to Section 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to Section 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to Section 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to Section 910 or 914 alleging a defect or deficiency in this real property or 'common areas' (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)..... ☐ Yes ☐ No

If the answer to any of these is yes, explain. (Attach additional pages if necessary.): _____

☐ Addendum attached. [See RPI Form 250]

----- PAGE 3 OF 5 — FORM 304 -----

FIGURE 3.3: Condition of Property: Transfer Disclosure Statement (TDS) (continued)

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- D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.
2. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller: _____ **Date:** _____, 20____

Seller: _____ **Date:** _____, 20____

III**AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

Agent notes the following items: _____

Agent: _____ **CalBRE#:** _____
 (Broker Representing Seller - Please Print)

By: _____ **Date:** _____, 20____
 (Associate Licensee or Broker Signature)

IV**AGENT'S INSPECTION DISCLOSURE**

(To be completed only if the agent who has obtained the offer is other than the agent above):

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

Agent notes the following items: _____

Agent: _____
 (Broker Obtaining Seller - Please Print)

By: _____ **Date:** _____, 20____
 (Associate Licensee or Broker Signature)

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FIGURE 3.3: Condition of Property: Transfer Disclosure Statement (TDS) (continued)

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V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER(S) AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller: _____ **Date:** _____, 20____

Seller: _____ **Date:** _____, 20____

Buyer: _____ **Date:** _____, 20____

Buyer: _____ **Date:** _____, 20____

Agent: _____ **CalBRE:** _____

(Broker Representing Seller - Please Print)

By: _____ **Date:** _____, 20____

(Associate Licensee or Broker Signature)

Agent: _____ **CalBRE:** _____

(Broker Obtaining the Offer- Please Print)

By: _____ **Date:** _____, 20____

(Associate Licensee or Broker Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

FORM 304

08-17

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AGENT'S INSPECTION DISCLOSURE

Whenever agents take listings on 1–4-unit residential properties, they should fill out a Real Estate Transfer Disclosure Statement. Even if the seller is exempt from the transfer disclosure statement requirements—for example, if the property is being sold to a co-owner—the agent is responsible for conducting an investigation and inspection independent of the seller and for filling out a transfer disclosure statement. The agent uses the same disclosure statement as that in Figure 3.3. Section III of that disclosure statement, the **Agent's Inspection Disclosure**, is to be completed if the seller is represented by a listing agent.

On May 31, 1984, the California State Supreme Court refused to hear the **Easton v. Strassburger** ([1984] 152 Ca.3d 90) case, making the decision of the appellate court case law in California final. Under *Easton*, a real estate agent was deemed responsible not only for what was known or accessible only to the agent or the principal but also for what the agent “should have known,” following a reasonably competent and diligent inspection. This court case has been codified in the Civil Code, beginning with Section 2079, and became effective January 1, 1986. It requires that all real estate agents conduct a competent and diligent visual inspection of all accessible property areas in a real estate sale involving 1–4-unit residential properties and disclose to the prospective buyer all material facts affecting the value or desirability of the property. There are no exceptions to or exemptions from this law. If an agent does not comply with this code section, the statute of limitations for bringing suit is two years.

A difficulty with this section of code is that it does not tell agents what to inspect or how. The following suggestions may help agents find physical problems and fundamental defects in the home. The major factors contributing to defects in homes are structural failure, material deterioration, water damage, mold, and insect infestation. When one of these factors is found in a home, some or all of the other factors often are present.

An agent could be held liable for failure to disclose a defect if a court determined a visual inspection would have definitely revealed the defect. The standard of care would likely be based on the minimum requirements of real estate licensing.

Structural Failure

Structural failure can be caused by environmental extremes, poor design, material deterioration, water, or insects. When inspecting for structural failure, agents should look for the following:

- Cracks in structural walls, beams, and columns (outside and inside), particularly foundations, or in corners of walls and around doors and windows (large V-shaped cracks may indicate settlement, upheaval, or lateral movement of soil; minor cracking is normal)
- Severe bulging in floors or structural walls
- Floors that slope

- Excessive deflection of girders and joists evidenced by a caved-in and creaky floor
- Doors that fail to close or that have been trimmed to close
- A roof ridgeline that is not straight
- Instability in any structural member

Material Deterioration

Material deterioration can be produced by substandard material or construction procedures. A moist environment can produce damp rot (a decaying fungus), one of the most severe types of material damage. Principal items to look for when inspecting for material deterioration include the following:

- Decay or warping of wood members (porches are a prime candidate)
- Rotting, cracking, or warping—check around doors and windows especially
- Erosion of concrete, masonry units, or mortar

Water Problems

Water problems can be caused by faulty plumbing, a rising ground water level, seepage, improper drainage, or condensation from inadequate ventilation. Water is a common enemy of a house. Principal items to look for when inspecting for water problems include the following:

- Water stains on ceilings that may be coming from leaky plumbing or a leaky roof
- Mold, mildew, and rust—be particularly alert for black mold
- Loose or warped wood members
- Rotted wood
- Cracked, chipped, or curled tile
- Premature interior paint deterioration—check for peeling and flaking
- Roof defects

Toxic Mold

Sellers of 1–4-unit residential property must disclose in the Real Estate Transfer Disclosure Statement if the owner is aware of mold on the premises.

The presence of **toxic mold** can have serious health effects. It is caused by damp conditions. Solving mold conditions can require walls being torn open. In some cases, buildings have been razed because the cost to cure the problem was too great. If a house has a dampness problem or has a musty odor, you should recommend to a buyer that the home inspector test for mold. Mold detection kits are available at hardware and building supply stores as well as through the internet. Some kits are priced less than \$10.

Insect Infestation

Carpenter ants and subterranean termites are the most damaging of all insects. Both attack wooden structures internally and might leave few visible signs of infestation on the surface, making their presence virtually impossible to detect.

Undetected and therefore untreated insect infestation could make the home structurally unsound over time. The following are some insect signs to look for:

- Carpenter ants: wood shavings near wood members
- Termites: earth and wood droppings, which look like sawdust and mud tubes leading from ground to wood or marks where mud tubes were removed

With regard to termite infestation, companies are licensed by the Structural Pest Control Board in California. Copies of termite reports conducted within the last two years are available for a fee to anyone who requests them.

There are two sections to termite reports:

- Section 1 is for what is commonly called active infestation. The industry standard is that the seller would pay for this termite damage.
- Section 2 is for what is generally a condition that could lead to a future problem. Examples of conditions noted in section 2 would be plumbing leaks or excessive moisture conditions. Generally, the buyer would pay to correct section 2 problems.

Detecting Defects

There are too many possible defects to mention here, but agents have developed inspection techniques to detect some of the more common problems. For example, defective wood framing can be detected after a few years by uneven floors and window sills. If an uncarpeted floor looks uneven, a simple test is to place a marble at several places on the floor; rolling marbles may indicate a problem. Resawn doors or doorjambs reworked because they were no longer perpendicular to the floor signify a structural defect. Sticking doors and windows can indicate green lumber, sloppy workmanship, foundation settling, or imperfect framing. Ceiling stains generally indicate a past or current roof or plumbing problem. A **red flag** is anything that indicates a possible problem. Any red-flag information should be conveyed to the purchaser with a warning that it could indicate a problem. Remember, agents' legal responsibility extends only to a visual inspection of reasonably accessible areas.

A *red flag* is a visual sign or indication of a defect.

Many agents today use the following techniques to help protect them in the area of inspection disclosure:

1. Have the buyer pay for a home inspection, as well as a termite report, whereby a professional inspector examines the property, verifies defects on the transfer disclosure statement, and points out any defects that are not on the statement. The termite inspection is done by a separate inspector. The seller would be requested to correct any problems discovered.

2. Obtain a home warranty. The purchase contract may call for the seller to pay the cost, typically between \$300 and \$600 for one-year coverage, but can be significantly higher for large structures. There is usually a fee of about \$60 to \$100 each time a technician makes a service call. Coverages vary but generally include appliances and electrical, plumbing, heating, and cooling systems. Some brokers offer home warranty protection on all their sales. Buyers often purchase the coverage if not otherwise provided.

Real estate agents are required only to visually inspect one-to-four residential units.

Even if any one or all of these techniques are used, the agent is still responsible for inspecting the home and retains liability for any undisclosed defects that the agent knew about or should have discovered with a reasonably diligent visual inspection.

In addition to physical problems of the property itself, the agent must disclose anything else that might affect the buyer's decision to buy the property. These factors range from the property's being in a flood zone or on or near an earthquake fault to the presence of a nearby nuclear power plant. The agent needs to learn as much as possible about the house and the area around it.

SELLER'S PROPERTY DISCLOSURE

This disclosure form was developed by the California Association of REALTORS®. The form is not required by law but is required by contract. California Association of REALTORS® forms require it. The form is a continuation of the transfer disclosure form. It is a multipage document and is filled with yes or no questions on a variety of topics. The questions are based on the seller's knowledge or recollection. If the answer is yes to a question, the form has room for an explanation.

DISCLOSURE OF DEATH OR AIDS

A death on the property within three years of the date of an offer is considered a material fact and must be disclosed. After three years, a death from any cause need not be disclosed.

Acquired Immunodeficiency Syndrome (AIDS) is classified as a disability, so disclosure would be considered discriminatory.

If a buyer asks a direct question concerning a death or cause of death, a false answer would be considered misrepresentation.

Stigmatized Property

Stigmatized property is property that may be perceived as undesirable for other than physical or environmental reasons. Besides murder or suicide, a house could be stigmatized by the fact that molestations occurred in the home, that the property has a reputation of being haunted, that satanic rituals had taken place there, or that the property has the reputation of being unlucky because of calamities that befell previous residents.

Because we don't know what a court will say should have been disclosed, as well as because disclosure is the right thing to do, if a fact or reputation could conceivably affect a buyer's decision, disclose it.

Licensed Care Facilities

Opinion 95-907 of the California Attorney General's Office makes it clear that a real estate agent need not disclose the location of a licensed care facility that serves six or fewer people. (A larger facility close to a property being sold would likely require disclosure.)

NATURAL HAZARDS DISCLOSURE

Earthquake Safety

California law requires that when selling 1–4-unit residential properties built before January 1, 1960, you must disclose whether the dwelling has earthquake weaknesses. The California Seismic Safety Commission has published *The Homeowner's Guide to Earthquake Safety*, a booklet intended to help buyers, sellers, and real estate agents recognize some of the weaknesses in houses that affect earthquake safety. The buyers should sign that they have received the guide.

For all houses sold in California, an earthquake safety disclosure statement must be filled out and signed by the buyer and the seller. This disclosure statement is called the **Residential Earthquake Hazards Report** (Figure 3.4). The agent should prepare to answer the following seven questions, which are answered in the booklet.

1. What is a braced water heater?

A braced water heater is one that has metal strips to attach it to the wall.

2. Is the house bolted to the foundation?

If the house has a crawl space, you should be able to see the tops of the anchor bolts every 4 to 6 feet along the sill plate.

3. What is a cripple wall?

A cripple wall is a short wood wall on top of the foundation that creates a crawl space.

4. Is the foundation made of unreinforced masonry?

Most brick and stone foundations are unreinforced. For concrete block, check the blocks on the top of the foundation. If they are hollow, the foundation probably is not reinforced. (Generally, steel rods are embedded in grout in the cells if the foundation is reinforced.)

5. If the house is on a hillside, two questions need to be answered: (1) Are the exterior tall foundation walls braced? (2) Were the tall posts or columns either built to resist earthquakes or have they been strengthened?

If wall studs are without plywood sheathing, diagonal wood bracing, or steel bracing, the wall is not braced. Consult an engineer to determine if posts or unbraced walls need strengthening.

6. Are the exterior walls strengthened?

If the house was built before 1940, walls are most likely not reinforced. You can check the house plans, which are probably on file with the building department. Otherwise, it could be difficult to determine if walls are reinforced. There are professional testing services that can determine the presence of steel in the walls.

7. If the house has a living area over the garage, was the wall around the garage door strengthened or built to resist earthquakes? Check if there are braces or plywood panels around the garage-door opening. If the garage-door opening is in line with the rest of the house, additional bracing is probably not needed.

If these questions cannot readily be answered by a cursory inspection, the services of a professional inspector or engineer may be required.

FIGURE 3.4: Residential Earthquake Hazards Report

RESIDENTIAL EARTHQUAKE HAZARDS REPORT						
<p>NOTE: This form is used by a seller or seller's agent when selling a one-to-four unit residential property built before 1960 and preparing a marketing package in compliance with earthquake hazard disclosure mandates, to prepare and hand to prospective buyers for their review, together with a copy of the "Homeowner's Guide to Earthquake Safety," identifying any potential earthquake weaknesses the property may have. [See RPI Forms 316-1]</p>						
<p>Name _____ Assessor's Parcel No. _____</p> <p>Street Address _____ Year Built _____</p> <p>City _____, County _____, Zip Code _____</p> <p>Answer these questions to the best of your knowledge. If you do not have actual knowledge as to whether the weakness exists, answer "Don't Know." If your house does not have the feature, answer "Doesn't Apply." The page numbers in the right-hand column indicate where in the "Homeowner's Guide to Earthquake Safety" you can find information on each of these features.</p>						
		Yes	No	Doesn't Apply	Don't Know	See Page
1.	Is the water heater braced, strapped, or anchored to resist falling during an earthquake.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	12
2.	Is the house anchored or bolted to the foundation?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14
3.	If the house has cripple walls:					
3.1	Are the exterior cripple walls braced?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16
3.2	If the exterior foundation consists of unconnected concrete piers and posts, have they been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18
4.	If the exterior foundation, or part of it, is made of unreinforced masonry, has it been strengthened?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	20
5.	If the house is built on a hillside:					
5.1	Are the exterior tall foundation walls braced?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	22
5.2	Were the tall posts or columns either built to resist earthquakes or have they been strengthened?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	22
6.	If the exterior walls of the house, or part of them, are made of unreinforced masonry, have they been strengthened?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	24
7.	If the house has a living area over the garage, was the wall around the garage door opening either built to resist earthquakes or has it been strengthened?.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	26
8.	Is the house outside an Alquist-Priolo Earthquake Fault Zone (zones immediately surrounding known earthquake faults)?			<i>Lines 8 and 9 to be reported on the Natural Hazards Disclosure Report</i>		36
9.	Is the house outside a Seismic Hazard Zone (zone identified as susceptible to liquefaction or land sliding)?					36
<p>If any of the questions are answered "No," the house is likely to have an earthquake weakness. Questions answered "Don't Know" may indicate a need for further evaluation. If you corrected one or more of these weaknesses, describe the work on a separate page. [See RPI Form 250]</p> <p>As Seller of the property described herein, I have answered the questions above to the best of my knowledge in an effort to disclose fully any potential earthquake weaknesses it may have.</p> <p>EXECUTED BY:</p>						
<p>_____, 20____</p> <p>(Seller)</p>		<p>_____, 20____</p> <p>(Seller)</p>		<p>_____, 20____</p> <p>(Date)</p>		
<p>I acknowledge receipt of this form, completed and signed by Seller. I understand that if Seller has answered "No" to one or more questions, or if Seller has indicated a lack of knowledge, there may be one or more earthquake weaknesses in this house.</p>						
<p>_____, 20____</p> <p>(Buyer)</p>		<p>_____, 20____</p> <p>(Buyer)</p>		<p>_____, 20____</p> <p>(Date)</p>		
<p>This earthquake disclosure is made in addition to the standard real estate Transfer Disclosure Statement (TDS) also required by law. [See RPI Forms 314 and 304]</p>						
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Commercial Property Earthquake Hazards

Sellers or sellers' agents must give buyers a copy of the *Commercial Property Owner's Guide to Earthquake Safety* for sales or exchanges of any real property built of precast concrete or reinforced masonry walls with wood frame floors or roofs built before January 1, 1975, unless such property falls within an exemption category.

Natural Hazard Disclosure Statement

The Natural Hazards Disclosure Statement sets forth the following additional natural hazard disclosures that must be made on a statutory form when the property lies within one or more state mapped hazard zones. If the property is within a seismic hazard zone as shown by the state geologist, the fact must also be disclosed. Although sellers can take it upon themselves to make such disclosures, many transactions involve a third-party provider such as Property I.D. (www.propertyid.com) or Disclosure Source (www.disclosuresource.com) that interprets the maps for the sellers and makes the statutorily required disclosures to the buyer. These reports cost between \$80 and \$120, on average. (See Figure 3.5.)

WEB LINK



- **Special flood hazard areas—Flood hazard areas** are indicated on maps published by the Federal Emergency Management Agency (FEMA). (Maps may be purchased from FEMA by calling 1-800-358-9616.) The seller's agent must disclose this to the buyer if the agent has knowledge that the property is in such a zone or if a list of areas has been posted in the county recorder's office, county assessor's office, and county planning agency.
- **Areas of potential flooding**—These areas are subject to possible flooding, as shown on a dam failure map. Disclosure must be made if the seller or the seller's agent has knowledge of the designation or a list of properties, including seller's property, has been posted at the county recorder's office, county assessor's office, and county planning agency. (**Note:** If an owner has received federal flood disaster assistance, then the seller must notify the purchaser of the requirement to obtain and maintain flood insurance.)
- **Very high fire hazard zones**—The state has imposed in these **fire hazard areas** fire protection requirements that subject owners to property maintenance requirements. For homes constructed before January 1, 2020, the seller must decline if real property is located in a high or very high fire hazard severity zone. The notice must include fire hardening improvements made, as well as features that make the home vulnerable to wildfires. Compliance with laws dealing with defensible space must be proven.
- **State fire responsibility areas**—These are areas where the state not only sets protection requirements but also has primary firefighting responsibility. This disclosure must be made if the seller or the seller's agent has actual knowledge of this designation or the local agency has a map that includes the seller's property that has been posted at county recorder's office, assessor's office, and planning agency.

FIGURE 3.5: Natural Hazard Disclosure Statement


	NATURAL HAZARD DISCLOSURE STATEMENT		
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Prepared by: Agent _____ Broker _____ </td> <td style="width: 50%; border: none;"> Phone _____ Email _____ </td> </tr> </table>		Prepared by: Agent _____ Broker _____	Phone _____ Email _____
Prepared by: Agent _____ Broker _____	Phone _____ Email _____		
<p>NOTE: This form is used by a seller, seller's agent and third-party contractor when a report on the natural hazards affecting a property is prepared for inclusion in a property marketing package, to disclose natural hazards of a property to prospective buyers for their review on commencement of negotiations as mandated.</p>			
<p>DATE: _____, 20____, at _____, California. This disclosure statement is prepared for the following:</p> <p><input type="checkbox"/> Seller's listing agreement [See RPI Form 102] <input type="checkbox"/> Purchase agreement [See RPI Form 150-159] <input type="checkbox"/> Counteroffer [See RPI Form 180] <input type="checkbox"/> _____</p> <p>dated _____, 20____, at _____, California, entered into by _____, as the _____, regarding real estate referred to as _____.</p>			
Natural Hazard Disclosure Statement:			
<p>Seller and Seller's Agent(s) or a third-party consultant disclose the following information with the knowledge that even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the subject property.</p> <p>Seller hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.</p>			
<p>THE FOLLOWING ARE REPRESENTATIONS MADE BY SELLER AND SELLER'S AGENT(S) BASED ON THEIR KNOWLEDGE AND MAPS DRAWN BY THE STATE AND FEDERAL GOVERNMENT. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN SELLER AND BUYER.</p>			
<p>THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S): (Check appropriate response)</p>			
<p>1. A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency. Yes____ No____ Do not know/information not available from local jurisdiction____</p>			
<p>2. AN AREA OF POTENTIAL FLOODING shown on an inundation map pursuant to Section 8589.5 of the Government Code. Yes____ No____ Do not know/information not available from local jurisdiction____</p>			
<p>3. A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code. Yes____ No____</p>			
<p>4. A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with the local agency for those purposes pursuant to Section 4142 of the Public Resources Code. Yes____ No____</p>			
<p>5. AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code. Yes____ No____</p>			
<p>6. A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code. Yes (Landslide Zone)____ Yes (Liquefaction Zone)____ No____ Map not yet released by state____</p>			
----- PAGE 1 OF 2 — FORM 314 -----			

FIGURE 3.5: Natural Hazard Disclosure Statement (continued)

----- PAGE 2 OF 2 — FORM 314 -----

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. SELLER(S) AND BUYER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Check only one of the following:

- ☐ Seller(s) and their agent represent that the information herein is true and correct to the best of their knowledge as of the date signed by Seller and Seller's Agent.
- ☐ Seller(s) and their agent acknowledge that they have exercised good faith in the selection of a third-party report provider as required in Section 1103.7 of the Civil Code, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third-party disclosure provider as a substituted disclosure pursuant to Section 1103.4 of the Civil Code. Neither Seller(s) nor their agent has independently verified the information contained in this statement and report or is personally aware of any errors or inaccuracies in the information contained on the statement. This statement was prepared by

Third-Party Disclosure Provider _____ Date _____

Date: _____, 20____

Date: _____, 20____

Seller: _____

Seller's
Broker: _____ DRE # _____

Seller: _____

Seller: _____ DRE # _____

Buyer represents that they have read and understand this document. Pursuant to Civil Code Section 1103.8, the representations made in this Natural Hazard Disclosure Statement do not constitute all of Seller's or Seller's Agent's disclosure obligations in this transaction.

Buyer(s): _____ Date: _____

Buyer(s): _____ Date: _____

FORM 314

01-19

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- **Wildland area that may contain substantial fire risks and hazards**—Unless the Department of Forestry enters into a cooperative contract, the state is not responsible for fire protection services within wildland areas. The seller must make this disclosure if the seller or the seller's agent has knowledge that the property is in a designated area or if maps showing the property to be in such an area is posted at the office of the country recorder, county assessor, and county planning agency.
- **Earthquake fault zone as indicated on maps**—Maps can be obtained online through www.conservation.ca.gov/cgs/geohazards/earthquakes.
- **Seismic hazard zone**—An earthquake in such a zone could result in strong shaking, soil liquefaction, or landslides. The seller or the seller's agent must disclose to the buyer that the property is in such a zone if the seller or the seller's agent has actual knowledge that the property is in such a zone or that maps showing the property is in such a zone have been posted at the offices of the county recorder, county assessor, and county planning agency. **Note:** If upon looking at a map, a reasonable person cannot tell with certainty if a property is within a designated area, then the Natural Hazards Disclosure Statement should be marked "Yes."

Landslide Inventory Report

WEB LINK



A California Geological Survey developed highway corridor landslide hazard maps. The maps provide an inventory of hillside activity along selected corridors. Maps may be downloaded from www.conservation.ca.gov/cgs/geohazards/landslides. While there is not a specific requirement for this report, because the potential for landslides or mudflows is a material fact, these potential dangers should be revealed to prospective buyers.

ENVIRONMENTAL HAZARDS DISCLOSURE

California legislation mandates **environmental hazards disclosure** (Civil Code 25417) to inform homeowners and prospective homeowners about environmental hazards located on and affecting residential property. The seller seldom knows if there are any environmental hazards. Thus, a statement that the seller is unaware of environmental hazards is not a guarantee that the property is free of such hazards. It is in the seller's and the future buyer's interest to know what hazards are common, where they might be found, and how they might be alleviated.

California's Environmental Hazards Booklet

The Real Estate Transfer Disclosure Statement specifies environmental hazards. By providing the booklet *Environmental Hazards: A Guide for Homeowners, Buyers, Landlords, and Tenants*, neither the seller nor the seller's agent need furnish the buyer or lessee (lease over one year) any more information concerning hazards unless the seller or the agent have actual knowledge of environmental hazards concerning the property.

Hazardous Substances Released

Health and Safety Code Section 25359.7(a) requires **hazardous waste disclosure**. Owners of nonresidential property must give prior notice to buyers or lessees if they know of the release of hazardous substances on the property or if they have reasonable cause to believe hazardous substances exist on or beneath the property. **Brownfields** is a term used to describe contaminated soil.

Tenants are required to notify landlords (both residential and nonresidential) of hazardous substances that they know have been released or believe to exist on or beneath the property. Failure to disclose constitutes a default under the lease.

Lead-Based Paint

The seller or the lessor of residential property built before 1978 must deliver to prospective buyers or tenants the booklet ***Protect Your Family from Lead in Your Home***, which was prepared by the federal Environmental Protection Agency. (A lead-based paint disclosure is also required for the sale, but not leasing, of commercial property.)

Providing the California booklet *Environmental Hazards: A Guide for Homeowners, Buyers, Landlords, and Tenants* meets the federal requirement.

Owners must disclose to their agents, as well as prospective buyers and tenants, the presence of known lead-based-paint hazards. Any available records or reports as to lead-based paint must be provided.

Landlords who receive any federal subsidies or have federally related loans, when confronted with deteriorating paint in a pre-1978 housing unit, must alert tenants to the possible health dangers and use government-certified workers and special containment practices to minimize risk of public exposure. As it relates to lead-based paint, the EPA rule requires that contractors and maintenance professionals working in pre-1978 housing be certified, that their employees be trained, and that they follow protective work practice standards.

This applies to renovation, repair, or painting activities affecting more than 6 square feet of lead-based paint in a room or more than 20 square feet of lead-based paint on the exterior.

WEB LINK



Visit www.epa.gov/lead for more information.

Environmental Hazards Booklet

The Department of Real Estate and the Department of Health Services have prepared a booklet for homeowners and buyers called *Residential Environmental Hazards*. This booklet is distributed by the California Association of REALTORS®, as well as other form providers, for use by real estate agents to fully disclose environmental hazard issues to prospective buyers. The booklet contains approximately 38 pages to be read by buyers, who should sign a form signifying that they have received the booklet. Inside the back cover is a tear-out sheet (Figure 3.6) to be signed by the buyer(s) and retained in the broker’s files.

Under the mandated disclosure of environmental hazards, it is important for brokers to have copies of these tear-outs in their files. Sales agents should make their own photocopies to keep in their personal escrow files.

The booklet is divided into chapters as follows:

- Asbestos
- Carbon Monoxide
- Formaldehyde
- Hazardous Waste
- Household Hazardous Wastes
- Lead
- Mold
- Radon

The appendixes contain the following:

- A list of federal and state agencies
- A glossary of terms

All agents should obtain copies of this booklet and familiarize themselves with the six basic topics. You may be asked questions by your buyers and sellers, and every buyer must be given a copy of the booklet.

FIGURE 3.6:
Environmental Hazards Client Card

To Whom It May Concern:

I have received a copy of *Environmental Hazards: A Guide for Homeowners, Buyers, Landlords, and Tenants* from the Broker(s) in this transaction.

Date:

Time:

Date:

Time:

(Signature)

(Printed Name)

(Signature)

(Printed Name)

Water Contamination

Well water has been seriously contaminated in many areas of California by industrial, agricultural, farming, and military operations. Many wells have been capped. Besides arsenic from mining, there are countless insecticides and chemicals of all types that were not known to be harmful when discharged.

Perchlorate, the primary ingredient of solid rocket fuel, is believed to be particularly dangerous to health. It alters hormonal balances (thyroid) and impedes metabolism and brain development. The EPA has urged the Pentagon to conduct widespread testing, but the Defense Department has resisted.

If an agent knows of problems in a water supply or a house has its own well in an area where water contamination has been found, then the broker has a duty to provide the information to a prospective buyer.

Sick Building Syndrome

Many modern commercial buildings have sealed windows and receive fresh air through their ventilation systems. Some of these buildings have developed what is known as **sick building syndrome (SBS)**. Common tenant complaints include headaches; eye, nose, and throat irritations; dry cough; dry or itchy skin; dizziness; nausea; difficulty concentrating; fatigue; and sensitivity to odors. The problems relate to time spent in the building, and most sufferers report relief soon after leaving the building.

SBS problems may be located in the entire building or just in one area. A problem with SBS is that a specific cause is not known, although it appears to be related to inadequate ventilation. Corrective action has been to increase ventilation and to clean the ventilation system.

If an agent knows that a property has a reputation as a sick building, the agent should reveal this fact. Failure to do so could expose the agent to significant liability. However, specific SBS disclosure is not mandated by law.

SUBDIVISION DISCLOSURE

There are a number of disclosures that relate to subdivisions.

Public Report

The purpose of the California Subdivided Lands Law is to protect purchasers in new subdivisions from fraud. A disclosure known as a **public report** must be provided to purchasers, who must sign that they have received and accepted the report before they are bound to complete the purchase. The California Real Estate Commissioner must approve the public report, which simply discloses information on the project such as location, size of the offering, identity of the subdivider, the interest to be conveyed, and provisions for handling deposits, purchase money, taxes, and assessments. Also included are use restrictions, unusual costs that a buyer will have to bear at time of purchase, hazards, adverse environmental

findings, special permits required, utility availability, and so forth. A public report is good up to five years from date of issuance.

The Real Estate Commissioner may issue a preliminary public report that is good for one year or until the public report is issued, whichever occurs first. A subdivider can accept a deposit with a reservation if there is a preliminary public report, but the purchaser is not obligated until signing that he accepts the public report.

A conditional public report that allows the subdivider to enter into a binding contract can be issued, but the escrow cannot be closed until issuance of the public report. The conditional public report period cannot exceed six months and may be renewed for one six-month period. If the public report is not issued within this period or if the purchaser is not satisfied with the final public report because of material changes, the purchaser is entitled to the full refund of any deposit.

COMMON INTEREST SUBDIVISION

A **common interest subdivision** is a subdivision in which owners own or lease a separate lot or unit together with an undivided interest in the common areas of the project. These common areas usually are governed by a **homeowners association (HOA)**.

In the sale of a common interest subdivision, along with the public report, the purchaser must be given a brochure published by the Department of Real Estate titled ***Common Interest Development General Information***. In addition, and before transfer of title, owners of condominiums, community apartment projects, cooperatives, and planned unit developments must provide purchasers with a copy of the covenants, conditions, and restrictions; bylaws; and articles of incorporation, plus an owners association financial statement, including the current assessments, late charges, plans on change in assessments, and any delinquent assessments and costs. (A homeowners association must furnish the owner a copy of the latest version of documents within 10 days of request by the owner. Only a reasonable fee beyond actual costs may be charged for this.)

Upon request, HOAs must provide an estimate of the fee for providing prospective buyers with governance documents and required disclosures. The fee must be based on actual costs to the HOA, which cannot bundle nonmandatory documents with the required documents to increase the fee. There cannot be an additional fee for electronic delivery of documents. In addition to required disclosures, 12 months of minutes of the HOA meetings must be supplied upon request.

For common interest subdivisions, buyers must be provided information about restrictions and the homeowners association (HOA).

If there is an age restriction, a statement must be included that it is only enforceable to the extent permitted by law (citing applicable law).

If there is a drought state of emergency declared by the governor or local government, a homeowners association may not fine a homeowner for reduced watering or ceasing to water plants. If recycled water is used, the association can still fine the owner for not keeping up landscaping. HOA prohibitions on replacing turf with low-water-use plants are void and unenforceable.

Homeowners associations cannot prohibit an owner from keeping one pet (subject to reasonable restrictions), nor can they prohibit solar panels or enforce any prohibition on water-efficient plantings.

Homeowners associations cannot restrict construction of an accessory dwelling unit in a common-interest development.

Homeowners associations cannot have a blanket prohibition against renting. They must allow at least 25% of units to be rented.

Homeowners associations cannot prohibit religious items on front doors or entry frames.

Homeowners associations, as well as landlords, cannot prohibit tenants from personal agriculture in portable containers but can specify container requirements.

Civil Code Section 1360.2 requires sellers of common interest developments to disclose whether rental restrictions exist. The code also prohibits an HOA from placing rental restrictions that limit existing owners. Restrictions added to the CC&Rs can apply only to subsequent buyers.

If the association plans to sue or has commenced an action against the developer for damages, the construction defects must be listed. If a settlement has been reached regarding construction defects, the defects to be corrected must be described, and an estimate of when the work will be completed, as well as status of other defects, must be provided to the buyer.

Owners in common-interest subdivisions are required to provide annual notices to their HOA regarding their mailing addresses.

Homeowners associations can record a lien against a member's property for unpaid assessments if the amount exceeds \$1,800. There is a 90-day redemption period after lien foreclosure. (Civil Code 1367.4)

Condominium Conversion Notice

When a developer intends to convert an apartment to individual ownership, the developer must notify current and prospective tenants of the intent, the public hearings, and the right to purchase their unit.

Interstate Land Sales Full Disclosure Act

This federal act requires disclosures for interstate sale of remote unimproved lots for subdivisions of 100 or more parcels. The act, which was enacted to prevent fraud, requires disclosures as to title, location, facilities, utilities availability and charges, and soil conditions. After receiving a copy of the property report, the prospective purchaser has a seven-calendar-day *cooling-off period* in which to cancel the transaction.

California Land Project

Similar to the Interstate Act, the California Act applies to 50 or more unimproved parcels in low population density areas. The purchaser must be informed of the 14-day right to cancel the purchase (seven days for federal).

FINANCING DISCLOSURE

There are a number of broker, as well as lender, disclosures relating to financing.

Seller Financing Disclosure

Financial disclosure involving seller carryback financing of 1–4-unit residential properties was one of the first mandated disclosures. In the 1970s, the term *creative financing* became very popular, and in most cases, it meant the seller was to *carry back* (accept a note for part of the purchase price secured by a wraparound or junior mortgage, deed of trust, or contract for deed) a second or third trust deed on the property just sold. Although much of this creative financing was an honest attempt to sell the seller's property and provide a win-win situation for both the buyer and the seller, some agents were not prudent in their judgment. If the seller had to foreclose on the buyer, the payments on the home often were so high that the seller could not handle the foreclosure and would lose the equity in the note she was carrying.

Unethical or unsophisticated agents and buyers developed *walk-away financing* in the late 1970s and early 1980s. An unethical purchaser would convince the seller and his agent to let the purchaser buy the property with a low down payment and then borrow on the property and let the buyer pull cash out. The buyer would make no payments on the property and would let the seller and the lenders reclaim the overencumbered property. Of course, the seller would be on the “short end of the stick.”

This kind of financing and the complaints stemming from the victims helped enact Civil Code Sections 2956–2967, which became law on July 1, 1983. These statutes require disclosure of seller carryback financing on 1–4 unit residential property in the **Seller Financing Addendum and Disclosure Statement**. The disclosure must be made to both the buyer and the seller, and the units do not have to be owner-occupied for the statute to govern.

Many items and facts must be disclosed, including these major items:

- The terms of the note, such as original loan amount, interest rate, and term (number of payments)
- All other liens on the property: the original loan amount, current balance, interest rate and any provisions for variations in the interest rate, term, balloon payments, maturity date, and whether any payments are currently in default
- That the note, if not fully amortized, will have to be refinanced at maturity and that this might be difficult or impossible to accomplish in the

conventional marketplace (If balloon payments are called for, the seller [holder of the note] must notify [send or deliver to] the buyer not less than 60 days or more than 150 days before the due date of the note. The notice must specify to whom payment is due, the due date, and the exact amount due [or a good-faith estimate], including the unpaid balance, interest, and other allowable charges.)

- That loans have or will have negative amortization, or that deferred interest ARMs (adjustable-rate mortgages) could have negative amortization, must be clearly disclosed and its potential effects explained (negative amortization means that the monthly payments are less than the monthly interest on the loan, with the result that the borrower ends up owing more than the original loan amount)
- Who is liable for the payoff of the underlying loan in an all-inclusive trust deed (AITD) if the lender accelerates the loan
- The buyer's creditworthiness (credit report, job verification, etc.)
- A request for notice of default filed and recorded for the seller to help protect the seller in case any senior loans are foreclosed
- That a title insurance policy will be obtained and furnished to both buyer and seller
- That a tax service has been arranged to notify the seller whether property taxes have been paid on the property and who will be responsible for the continued service and compensation of the tax service, and that arrangements have been made to notify the seller if the casualty insurance payments are not being paid
- That the deed of trust securing the note will be recorded, thus avoiding the problems of not recording the trust deed
- The amount, source of funds, and purpose of the funds when the buyer is to receive cash from the proceeds of the transaction

Remember that the items above represent only a condensed version of the financing disclosure law. How disclosure must be made on the forms is shown in California Civil Code Sections 2956-2967.

Adjustable-Rate Loan Disclosure

Lenders offering an adjustable-rate residential mortgage must provide prospective borrowers the most recent copy of the Federal Reserve publication ***Consumer Handbook on Adjustable-Rate Mortgages***.

Blanket Encumbrance Disclosure

If there is an underlying blanket encumbrance that affects more than one parcel, the buyer's funds should be protected unless the unit can be released from the blanket encumbrance. The borrower must be made aware of and sign a notice that her interests could be lost if the holder of the blanket encumbrance forecloses, even though the borrower is current on his or her obligations. Developers of multiple projects often use blanket encumbrances to finance construction.

Mortgage Loan Disclosure Statement

When a real estate broker solicits or negotiates loans that are not federally related on behalf of lenders or borrowers, the broker must deliver a mortgage loan disclosure statement (MLDS) to the borrower within three business days of receiving the borrower's written loan application. For federally related loans, the Real Estate Settlement Procedures Act (RESPA) disclosures apply.

Lender/Purchaser Disclosure

This disclosure applies to private-party lenders and pension plans that make or purchase loans through a broker. The broker must provide a disclosure statement as to loan terms and loan status, as well as information about the property securing the loan and other encumbrances.

Borrower's Right to Copy of Appraisal

If the borrower paid for the appraisal, a lender must notify the borrower that the borrower can request and receive a copy of the appraisal report.

TILA-RESPA Rule

The Real Estate Settlement Procedures Act applies to federally related loans for 1–4-unit residential properties. The lender must furnish the buyer with a **Loan Estimate** form showing estimated closing and loan costs within three days of receiving the application and not less than seven days prior to consummation, as well as a booklet called *Your Home Loan Toolkit* within three days of application. Federally related loans include loans made by federally regulated lenders, lenders having federally insured deposits, loans that will be federally insured or guaranteed, and loans that are to be resold to Fannie Mae or Freddie Mac. There must be a justifiable service for every charge made. An administrative fee cannot be charged because it is not for a service performed.

RESPA allows a **controlled business arrangement** where a broker has a financial interest in a service provider. However, the relationship of the broker and the service provider must be fully disclosed, and the buyer must be free to use providers of other service, such as escrow services and loan brokerage services.

Integrated Disclosures

A number of disclosures have been combined as a result of requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to simplify RESPA and truth-in-lending disclosures. The disclosures have been combined into the following two forms, which are covered in Unit 12:

1. Loan estimate
2. Closing Disclosure

The borrower must be provided the Closing Disclosure at close of escrow.

Lender Compensation Disclosure

A broker must reveal to all parties to a transaction if the broker is to receive any compensation from a lender before the transaction closes escrow. **Note:** California law prohibits a broker from receiving referral fees from service providers.

Notice of Transfer of Loan Servicing

For loans secured by 1–4-unit residential properties, the borrower must be notified when the loan servicing function (collection) is transferred.

Consumer Caution and Home Ownership Counseling Notice

This notice must be given to applicants for a covered loan no later than three days before signing loan documents. It warns borrowers they are placing a lien on their home and could lose their home and all their equity. A covered loan is a consumer loan for a 1-4 residential unit building that is the principal residence of the consumer and where the original principal balance does not exceed the current conforming loan (loans that can be purchased by Freddie Mac or Fannie Mae).

Truth in Lending Act (Regulation Z)

This federal consumer protection act requires advertising disclosure of finance charges. Interest expressed as an annual percentage rate (APR) and terms of credit, if trigger terms, are used in the advertisement (see Unit 8). Before a borrower is obligated to complete designated loans, there must be full credit disclosure.

Notice of Adverse Action (Equal Credit Opportunity Act)

When a creditor denies a loan applicant, the creditor must provide a statement of reason for the denial or the applicant's right to obtain such a statement. Generally, this must be provided within 30 days of loan application.

Holden Act Disclosure

At the time of the loan application, borrowers must be notified of the prohibition against lender discriminatory practices and their rights under the law. The act prohibits refusing to lend in designated areas (redlining).

OTHER DISCLOSURES

Methamphetamine Contamination Order

Sellers or landlords must provide buyers and tenants with a copy of the cleanup order for contaminated structures. (**Note:** the cleanup order, not the fact of the contamination, must be disclosed.)

Megan's Law

WEB LINK



Megan's Law provides for registration of sex offenders and public availability of knowledge regarding the location of these offenders. Now, every sales contract or lease of 1–4-unit residential properties must include a notice informing buyers or lessees of the public availability of this information on the database website, www.meganslaw.ca.gov.

Elder Abuse Disclosure

California's Elder Abuse Law requires that escrow holders, realty agents, and others report elder financial abuse, fraud, or undue influence. The county public guardian is authorized to take control of the elder's assets to prevent abuse. If an agent feels that an elderly person is being financially abused, reporting the abuse is mandatory.

Mello-Roos Bond Disclosure

Mello-Roos bonds are municipal-type bonds issued to fund streets, sewers, and so forth for a new development. The bonds shift the expenses from the developer to each homebuyer, who must pay an assessment to retire the bond. The net effect is higher taxes for the homebuyer.

An owner must disclose to a buyer that a project is subject to a Mello-Roos levy for a sale or lease for more than five years. Failure to give notice before signing the sales contract (or lease) gives the buyer or the tenant a three-day right of rescission after receipt of the notice.

Structural Pest Control Inspection and Certification Reports

While the law does not require a **structural pest control inspection**, if required by contract or lender, a copy must be delivered to the buyer, and a copy must be filed with the state Structural Pest Control Board. Section 1 of the report covers visible evidence of active termite infestation, while section 2 covers conditions likely to lead to infestation. (When lender requires clearance, it refers to section 1.)

Septic System Disclosure

The disclosure is required when property is not presently connected to a sewer. The purchaser is alerted to the fact that an inspection may not discover latent defects. The buyer is also made aware of the fact that should a sewer connection be required in the future, the owner will have additional expenses.

Foreign Investment Real Property Tax Act (FIRPTA)

The buyer must be informed about the IRS withholding requirement of 15% of the gross sales price when the seller is a foreign person. (See Unit 14 for exemptions.)

The buyer must be informed about the California requirement to withhold $3\frac{1}{3}\%$ of the total sale price paid as state income tax. (See Unit 14 for details about this requirement and its exemptions.)

Importance of Home Inspection Notice

For the sale of 1–4-unit residential properties (including mobile homes) involving FHA financing or HUD-owned property, the borrower must sign a **home inspection notice** titled The Importance of a Home Inspection.

Home inspectors are prohibited from giving an opinion as to property value.

Smoke Detector Notice

A buyer of a single-family home must receive a **smoke detector disclosure** written statement indicating that the property is in compliance with current California law regarding the presence of smoke detectors. The issuance of a building permit triggers a requirement to update smoke detectors (10 year nonremovable battery).

Carbon Monoxide Detector Notice

Every residential unit that has fossil-fuel heating must have a carbon monoxide detector, and a seller disclosure of the presence or absence of a detector is required.

Water Heater Bracing

Sellers of real property must certify to prospective purchasers that the **water heater bracing** has been properly installed.

Water Conservancy Plumbing Fixtures

Single-family residences built before 1994 must be equipped with water conservancy fixtures. By 2019, all multifamily units must have water conservancy fixtures. For property altered or improved after 2014, water conservancy fixtures must be a condition of final permit approval (low-flow toilets, showerheads, and faucets).

Sellers of single-family residences must disclose to buyers the requirements of plumbing fixtures and whether or not the unit includes noncompliant plumbing. For multifamily units, the disclosure requirement begins in 2019.

Solar Panels

As of 2020, new residential buildings up to three stories high are required to use solar panels.

Supplemental Tax Bill Disclosure

Residential sellers must disclose to buyers in writing to expect supplemental tax reassessment bills. Because property is reassessed upon sale, the tax is likely to be higher for the remainder of the year. The supplemental bill covers the increase due.

Military Ordinance Location

If a transferor has knowledge that a property is within 1 mile of a former **military ordinance location** (military training ground) that may contain explosives, the transferor must disclose in writing that these former federal or state locations may contain potentially explosive ammunition. (the buyer has a statutory right of rescission.)

Commissions

A notice must be given to the party paying any real estate commission that commissions are negotiable. This notice must be in a font not less than 10 points and in bold typeface.

For detailed California disclosure requirements, check the Department of Real Estate website: www.dre.ca.gov.

Renter Notice of Foreclosure

Civil Code Section 2924.85 requires that rental applicants be given notice that the owner has received a notice of default and that there is a pending foreclosure.

RIGHT OF RESCISSION

There are statutory **rescission rights** for a number of transactions. Buyers (or borrowers) must be informed of their rights. Failure to disclose rights of rescission extends this right.

Truth in Lending Act—when a loan for consumer credit is secured by a borrower's residence, a rescission right exists until midnight of the third business day following the completion of the loan.

Interstate Land Sales Full Disclosure Act—this federal act calls for a disclosure statement, known as a *property report*, for subdivisions of 100 or more unimproved residential properties of less than 5 acres each that are sold in interstate commerce. Besides the required disclosures to the purchasers, the purchasers have a seven-day right of rescission.

California land projects—have a 14-day right of rescission.

Time-share—because of abusive sales tactics of many time-share developers, purchasers of time-shares now have a rescission right of three days after signing the contract.

Undivided interest subdivision—an undivided interest subdivision is one where the owners are tenants in common with the other owners but don't have

an exclusive possessory interest in a particular unit or space. An example is a campground where owners have a right to use a space if available. Purchasers in undivided interest subdivisions have a three-day right of rescission following the day the agreement is signed.

Home equity sales—because of fraud and unfair dealings by home equity purchasers, a homeowner has a rescission right when selling her equity interest in a residence in foreclosure. There is a right to cancel any contract with an equity purchaser until midnight of the fifth business day following the sales agreement or until 8 am on the day of the sale, whichever occurs first.

Mello-Roos disclosure—failure to disclose the fact that a property is in a Mello-Roos district would allow the transferee a three- to five-day right of rescission.

SUMMARY

The purpose of the disclosure requirements in real estate practice is fairness. Parties deserve to have the facts before they make decisions. These facts include detrimental facts known by the agent that the buyer or the seller would likely consider in decision making. The duty of disclosure is inherent in an agency. The fiduciary duty of the agent requires full disclosure. There is also a duty to nonagency third parties to disclose known *detrimental information*.

To avoid misunderstandings, agents must explain the various agency options to both buyer and seller. The agent makes a selection, and the parties confirm the selection.

The seller has disclosure duties to the buyer. For 1–4-unit residential properties, the seller must complete a Real Estate Transfer Disclosure Statement. The agent must also provide the results of his visual inspection to the owner.

An agent need not disclose a death on the premises after three years. An agent also need not disclose that a former resident was afflicted with or died of AIDS.

When there is seller financing, a seller financing addendum and disclosure is required. Buyers must be warned of any dangers.

For 1–4-unit residential properties built before January 1, 1960, the agent must disclose whether the dwelling has earthquake weaknesses. This is accomplished with a Residential Earthquake Hazards Report. For commercial property of specified construction, the seller or the seller's agent must give the buyer a copy of the *Commercial Property Owner's Guide to Earthquake Safety*.

Required natural hazard disclosures are for the following: special flood hazard area, area of potential flooding, very high fire hazard severity zone, wildlife area that may contain substantial forest fire risks and hazards, earthquake fault zone, seismic hazard zone, and landslide inventory report. These disclosures are made in a statutory form, the Natural Hazard Disclosure Statement.

Homeowners must be informed about environmental hazards on or affecting their property. The broker must provide a booklet to buyers on environmental hazards. Buyers and lessees also must be informed about hazardous substances released on or believed to be present on a property. Tenants must inform landlords if they release hazardous substances on the property.

For 1–4-unit residential properties built before 1978, purchasers must be given a *Protect Your Family from Lead in Your Home* booklet. Giving the buyers the California booklet, *Environmental Hazards: A Guide for Homeowners, Buyers, and Tenants*, also satisfies the federal requirement.

Prospective purchasers must be notified if a property is within 1 mile of a former military ordnance site where explosives might be located. Known water contamination must also be disclosed.

Subdivision disclosures include the public report and common interest information. Notices must also be provided to tenants of their rights when apartments are converted to common interest developments.

The Interstate Land Sales Act is a disclosure act governing sales of unimproved lots in interstate commerce. Its purpose is to prevent fraud. California has similar state disclosure requirements.

For common interest subdivisions, purchasers must be provided an information booklet on common interest subdivisions, as well as a copy of the CC&Rs, articles of incorporation, bylaws, rules and regulations, financial statement including changes, and plans for changes in assessments.

When there is seller financing, a seller financing addendum and disclosure is required. Buyers must be warned of any dangers.

Both federal and state laws require disclosures that must be made where applicable.

There are statutory rights of rescission for a number of disclosures.

CLASS DISCUSSION TOPICS

1. A property you have for sale is about two blocks from a park frequented by homeless people and prostitutes. So as not to offend prospective buyers, you avoid this area by a roundabout drive. Have you acted in a proper manner?
2. A buyer offers to trade 50 emeralds for a home you have listed. What, if any, are your obligations?
3. What environmental hazards would likely be present in your community?
4. Are there agents in your area who operate solely as buyer's agents? What are the advantages to a buyer in dealing with such an agent?

5. You receive what appears to be a fair offer from a prospective buyer; however, you know the buyer has sued sellers after purchasing several other properties. What do you tell your seller?
6. Evaluate your own home for possible environmental hazards.
7. Complete a Real Estate Transfer Disclosure Statement as if you were the seller of the property where you presently live.
8. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. Which of the following statements regarding an agent's duty in a real estate transaction is *TRUE*?
 - a. An agent has a fiduciary duty to the principal.
 - b. An agent must disclose any known detrimental information to a buyer, even when the agent represents the seller.
 - c. Any material facts the agent becomes aware of must be disclosed to the principal.
 - d. All of these are true.
2. Which of the following statements regarding agency disclosure is *TRUE*?
 - a. An agent need not provide a seller of a commercial building with an agency disclosure.
 - b. The listing agent cannot elect to be only a buyer's agent.
 - c. Both of these are true.
 - d. Neither of these is true.
3. Which of the following statements regarding agency disclosure is *TRUE*?
 - a. The confirmation of agency must be in writing.
 - b. The three steps of the disclosure process are disclose, elect, confirm.
 - c. The selling agent must confirm the agency before the buyer makes an offer.
 - d. All of these are true.
4. Which seller(s) must provide a Real Estate Transfer Disclosure Statement?
 - a. The seller of a lot
 - b. The seller of a 4-unit apartment building
 - c. The seller of a 16-unit apartment building
 - d. All of these
5. Under *Easton*, an agent's duty of inspection and disclosure covers
 - a. all types of property.
 - b. accessible and inaccessible areas.
 - c. a visual inspection and known or should have known defects.
 - d. none of these.
6. Which statement regarding earthquake safety disclosure is *TRUE*?
 - a. It applies to 1–4-unit residential properties.
 - b. It applies only to homes built before 1930.
 - c. The buyer can waive her right to a hazards report.
 - d. Delivery of a copy of *The Homeowner's Guide to Earthquake Safety* is evidenced by an affidavit from the agent.
7. The buyers sign that they have received a booklet relating to
 - a. environmental hazards.
 - b. floods, tornados, and earthquakes.
 - c. foreclosure rights.
 - d. rescission rights.

8. *Brownfields* is a term related to
 - a. insect infestation.
 - b. soil contamination.
 - c. undeveloped acreage.
 - d. seller financing.
9. The purpose of the Subdivided Lands Law is to
 - a. prohibit premature subdivisions.
 - b. set minimum physical standards.
 - c. protect purchasers from fraud.
 - d. allow for a uniform growth pattern.
10. A right of rescission is provided by law for purchase agreements involving all *EXCEPT*
 - a. 1–4-unit residential properties.
 - b. time-shares.
 - c. undivided interest subdivisions.
 - d. both b and c.

4

UNIT FOUR



PROSPECTING AND BUSINESS DEVELOPMENT

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- define prospecting and explain the importance of attitude in prospecting;
- describe methods of prospecting and sources of leads;
- understand regulations affecting prospecting; and
- explain the importance of the internet, farming, and a prospecting plan.

KEY TERMS

bird dogs
CAN-SPAM Act
centers of influence
contact management
system
data mining
do-not-call registry
door-to-door canvassing
endless chain

Facebook (Meta
Platforms, Inc.)
farming
FSBO
geographic farm
Instagram
LinkedIn
megafarming
networking

niche marketing
nongeographic farm
Pinterest
prospecting
real estate owned (REO)
Snapchat
Twitter
YouTube

WHAT IS PROSPECTING?

Prospecting is locating potential buyers and sellers.

Prospecting is the process of locating owners who are interested in selling property and prospective buyers who are interested in purchasing property.

Without prospecting, you would have much less inventory and fewer buyers. Real estate professionals know that even when buyers and sellers seek them out, it is often the result of prior prospecting or successfully helping someone they know.

Not only must licensees constantly prospect, they must have the proper attitude toward prospecting. A professional attitude includes considering prospecting a challenge and being positive and enthusiastic in speech and action. The author recommends the SSS system: *see* the people, *serve* the people, *sell* the people.

Develop the Proper Attitude

Prospecting is any method of exposure to people who can buy or sell real estate; hence, it is a major challenge to every licensee. The following questions will help you evaluate your own attitude toward prospecting:

- **Do you consider prospecting a major challenge?** Successful real estate selling entails countless hours and considerable expenditure of energy to keep up with a highly competitive market. Your attitude is the key to your success.
- **Do you recognize the urgency to maintain a constant supply of new prospects?** It is absolutely necessary to provide yourself with a constant supply of customers. Prospects may be found most anywhere; they are all around you.
- **Do you have a well-organized system to use in prospecting?** Because of the many prospect sources available and the necessity of assigning priorities to these sources, advance planning is essential. To get the best results from your prospecting, an effective and well-organized prospecting system is essential.
- **Are you afraid of rejection?** Prospecting is searching for the one among many who needs your services. Therefore, you will encounter rejection more often than success. Fear of being rejected is one of the contributing factors to failure of new licensees. You must take rejection professionally and not personally.

Many successful agents use licensed assistants to aid them in prospecting. When an assistant locates prospective buyers or sellers, the agent then takes over. This frees the agent for “A” Time activities (Unit 1).

METHODS OF PROSPECTING

The successful salesperson is always prospecting. A good prospector knows and accepts that different groups of people have not only varying interests and motivations but also substantially different political, social, philosophical, and economic views. Prospecting is less a matter of getting listings and sales than it is a matter

of developing sources for listings and sales. A licensee's ability to do this is limited only by imagination and commitment.

The prospecting method that will produce the best results varies according to the agent and the situation. The broker or the salesperson should choose a method or methods based on the following:

- Type of property involved
- Period of time planned for
- Types of prospects
- Neighborhood and property characteristics, including the properties themselves (number of bedrooms and baths, etc.), income characteristics of the neighborhood (income, family, and social interests), changes taking place (such as a changeover from single-family to multiple-family dwellings), special advantages of the location (schools, shopping centers, recreation areas, and so forth), and special interests and groups to which the agent belongs

After taking these factors into consideration, licensees also should review their own sales skills and personality and choose methods that emphasize their strengths and minimize their weaknesses. The following material covers just a few of the methods for prospecting. Real estate salespersons should consult with their brokers as to the selection and implementation of prospecting methods.

Door-to-Door Canvassing

While shunned by many real estate agents, **door-to-door canvassing** can be an excellent way to cover a geographic area. Successful canvassers know the number of people they must contact to obtain one good lead. They set goals of a particular number of contacts to achieve the number of leads they desire. They treat a rejection as one contact closer to another lead.

The best times to canvass are obviously when residents are home. With the large percentage of two-income families, early evenings or Saturday mornings are effective times. In retirement areas, daytime canvassing between 9 am and 11 am and between 2 pm and 4 pm could be effective. Do not canvass door to door after dark.

Canvassing an area having many retirees can be particularly beneficial, because many people welcome someone to talk to and can offer valuable information as to needs of neighbors.

When you canvass door to door, step back from the door after you ring the bell so you won't appear menacing. Don't carry a briefcase because this also can be menacing. A notepad or a clipboard is far less intimidating. Smile when you talk, and keep in mind that you must get the homeowner's attention within the first 20 seconds.

WEB LINK

Because printed reverse directories are becoming a tool of the past, you can obtain occupants' names from a number of sources, including www.whitepages.com, Vulcan7, REDX, and CocoFinder. This is particularly valuable when approaching a for sale by owner.

A sample approach for door-to-door canvassing would be as follows:

- Address the owner by name (if possible).
- Introduce yourself and give your broker affiliation.
- Explain why you are at their front door. An excellent reason is to ask if they can help find a home for a particular family. People often like to help specific persons but have little interest in people in general. Never use a fictitious family. Simply describe one of the people you are working with to find a home. Never give out names or personal information about prospective buyers without their permission. Let the property owner know why you are interested in the specific area, such as a particular school, park, transportation, employment, et cetera.
- Ask if they know of anyone in the area who is planning to move or has had a change in family circumstances that might cause the person to contemplate a move. Also ask owners about their own specific plans. Ask owners if they or any of their neighbors might have any real estate purchase or sale plans for a home, second home, or investment property.
- Ask whether they would like to receive free (monthly) emails or newsletters showing the number of properties in the area that are on the market, the average listing price per square foot, and similar sale information.
- Thank the owner, leave your card, and jot down responses for future reference.

After a home has been sold by you or your office, a door-to-door canvass of the neighborhood can be especially effective. Consider the following approach, replacing the words in brackets with words that fit your situation:

Good morning [Mrs. Smith]. I am [Jane Thomas] from [Uptown Realty]. We have just sold the [Kowalski] home at [211 Elm down the block; the house with the large pine tree in the front yard]. The new owners are [Mr. and Mrs. Collins. He is an engineer, and she teaches first grade at Sunnyside School. They have one daughter, Mary Ann, who is nine years old]. I hope you will welcome them to your neighborhood.

As you undoubtedly realize, you live in a desirable area. In advertising the [Kowalski] home, we were contacted by a number of families whose needs we were unable to meet. Right now, I am looking for a home for a very fine family. [He is an accountant who is being transferred to our area from Ohio. They have two sons, ages three and six.] I need help in finding them a home. Do you know anyone who is planning to move? Has anyone in the area recently had a change in family size because of marriage, divorce, birth, or death, or has anyone recently retired? (Again, never give out personal information without approval. You want to present the prospective buyer as someone who would be welcome as a neighbor.)

Note: You first showed your competence by a sale, gave them information about a new neighbor, and then asked them for help for a particular family.

Consider visiting the clubhouse or pool of common-interest developments. You will often find people who are not only willing but eager to talk to you. This is especially true in retirement communities. By asking questions, you may get referrals of possible sellers or buyers. When you contact these referrals, it is not really a cold call because they were recommended to you by a friend.

Offering homeowners a monthly email that shows listings and sales activity in their area, as well as listing and sales prices, should result in email addresses and an entry for future contacts.

Besides canvassing for listings, you can canvass for buyers. By working an area around a new listing, you can approach owners with information about the listing and ask their help in choosing their new neighbors. Most people like their neighborhood and will tell you if they have any friends or acquaintances who might be considering relocating.

When canvassing around a listing, you should tell the party about the home that is available and ask whether they have a friend, family member, or coworker who might like to move to the area. You are giving them an opportunity to help pick their new neighbors.

Canvassing rentals around a new listing can be an effective method of securing buyers.

(Good Morning) I am _____ from (Realty). We have just listed a (3BR, 2 bath Cape Cod home) on (Sycamore Street) just (2 blocks) from here. I can show you how ownership can be a reality not just a dream. Would you rather remain here as a renter or own your own (single) family home?

With currently rising rents and relatively low interests, home payments are likely to be in line with or lower than rent. If you can get renters to listen to how they can be owners, you will have prospects to work with.

In some areas, agents like to canvass in teams, with each agent taking every other house. Team canvassing can help keep agents motivated to complete the goal you jointly set. A team approach also gives a canvasser a feeling of greater security.

Note: In some communities, door-to-door canvassing is not allowed or might require a permit. Check with your local municipality.

Telephone Canvassing

The Federal Communications Commission has established the National Do Not Call Registry to protect consumers from unwanted commercial solicitations. Landline, as well as all telephone numbers, may be registered. The fine for calling someone whose name appears in the **do-not-call registry** is currently up to \$43,792 per call.

WEB LINK

If you make calls seeking buyers, sellers, lessees, or lessors of property or to solicit any services, you should do so only after checking the registry. For detailed information about accessing the registry and exemptions, it is suggested that you check www.donotcall.gov.

WEB LINK

There is a relatively simple solution that avoids paging through huge lists. It is the use of a software program that scrubs the number of people who are on the do-not-call registry. There are now dozens of such programs available, such as www.scrubdnc.net/scrubdncone.aspx and www.okcaller.com/api.html.

WEB LINK

Brokers who do not use a scrubber program can request an account number, which can be given to agents. Agents can then access the registry by area code on the internet at <https://telemarketing.donotcall.gov>. A broker can obtain access to five area codes at no charge, but there is a charge of \$59 for each additional area code.

Telephone solicitors often use automatic dialers in conjunction with scrubbers. Automatic dialers are prohibited as to cellphone numbers. There are a number of current class-action lawsuits against real estate firms for violations of laws regarding using auto dialers to make consumer calls to cellphones and landlines without permission.

Do-not-call lists are available from the Federal Trade Commission by area code, and up to five area codes will be provided free of charge. Each additional area code requires a \$25 fee. It is necessary to check the updates on the registry at least every 90 days. For greater details, visit the website, www.donotcall.gov.

The following are some exceptions to the do-not-call rules:

- You may call a listed party if you have an existing business relationship (within 18 months of a purchase, sale, or lease).
- You may call a party within three months of an inquiry the party made.
- You may call people who have given you written permission to call.
- You may call commercial numbers (the registry only applies to residential phones).
- You may call the numbers on for-sale-by-owner ads or signs as a buyer representative, but not for the purpose of obtaining seller representation.
- You may call for survey purposes, but no solicitation for representation can be included in the call.

Because of the restrictive do-not-call rules, you should obtain written permission to make further calls when working with buyers, sellers, and even visitors to open houses.

Direct Mail Canvassing

Direct mail is an expensive way to canvass but with do-not-call restrictions, besides direct contact, it is the only way to reach many parties. Because of cost, agents should carefully plan their mailings and keep track of response rates from different mailings. To be effective, a mailing must get attention and result in action. (See Figure 4.1 and Figure 4.2.) Mailings of area properties listed and properties sold with list prices and/or sales prices should result in your mailing being retained as well as being read. People like to know values in their neighborhoods so they can apply a value to their own home.

FIGURE 4.1: Sample Mailing

UR
HOME REALTY

← *Date and address*

Dear _____:

Can You Help a Neighbor?

We need a 3-bedroom home in your neighborhood for a [young family]. [The husband is an engineer and the wife is a schoolteacher. They have an 11-year-old son and a daughter who is 7. They would like to relocate prior to school in September and desire a home within walking distance of Midvale School.]

[1. I will be calling you in a few days to determine 2. Please call me] if you know of anyone in the neighborhood who might consider selling their home to this fine family.

Sincerely,

Enclosure: ← *Card*

Note: While positive-appearing personal information can be an inducement to help a family, never include personal information without specific permission from the family.

Some general rules for direct mail canvassing include the following:

- Use a #10 plain envelope; don't use a window envelope.
- Don't use a mailing label; type or, preferably, hand-address the envelope.
- Consider first-class stamps (preferably commemorative stamps). If your letter looks like junk mail, it will likely be treated in that manner.
- Don't try to indicate that your letter is something it is not, such as by trying to give it the appearance of a government letter.
- If you get the reader's attention in the first few lines, the letter will be read in its entirety.
- If you indicate you will be contacting the recipient, you force them to consider your message. When you come to the owners' door, they will know why you are there.
- Never send out a mass mailing without test marketing the mailing piece.
- By keeping track of responses to different mailing pieces, you can eliminate ineffective mailings.
- Offering a premium such as a Dodger baseball cap for filling out a questionnaire or providing a lead can be effective in gaining information.

FIGURE 4.2: Sample Mailing

UR

HOME REALTY

← *Date and address*

Dear _____:

I Apologize

If you want to buy a home in [Claridge Estates], I don't really have much to show you. There has been a terrific demand, and the few owners who have taken advantage of the market quickly sold their homes. However, if you really want to buy, call me and I will put your name on my list of buyers, and I will call or e-mail you as soon as properties come on the market.

Now if you are interested in selling, that's a different story! I can prepare a report for you of recent comparable sales indicating the price range we can anticipate from a sale in the current market. This service is at no cost or obligation to you.

Want to take advantage of our offer? Call or e-mail me today.

Yours truly,

P.S. If you would like to be on our e-mail list to receive new listing and sales information in your neighborhood, please sign up on our site, [www.ur-home.net].

If you have already listed your home for sale with another broker, please disregard this letter.

Enclosure: ← *Card—List of recent listings and sales*

Email Solicitation

CAN-SPAM is an acronym for Controlling the Assault of Non-Solicited Pornography and Marketing.

To protect consumers from being assaulted by misleading unsolicited email messages, unsolicited emails must include the following:

- Opt-out mechanism where the recipient can indicate no more emails are to be sent
- Functioning return email address
- Valid subject line indicating a message is an advertisement
- Legitimate physical address of the mailer

It is a misdemeanor to send spam with falsified header information. Each violation is subject to a fine of \$46,517.

Email solicitations are effective for both seller and buyer. A subject header such as “New Listing Edgemont Estates” or “No Down Payment—4 Bedrooms” will

likely get the email opened if it addresses a need or interest of the recipient. For potential sellers, receiving an email heading such as “Real Estate Sales Activity-Edgemont Estates” can be effective. A monthly email showing the number of listings and sales, average price, price per square foot, as well as high and low prices for both listings and sales is of interest to many owners. Many of the same firms that provide mailing lists for areas also provide email addresses by zip code. Because of low costs and a greater consumer reliance on the internet, internet solicitations are playing a significant role in prospecting.

While email solicitations are low cost, you should realize that an estimated 70 to 80% of email real estate solicitations never get opened. Consider using an email distribution program to manage lists and generate reports as related to your email campaigns.

Building an Email Database

An often overlooked aspect of marketing for real estate agents is the amount of people they meet each and every day that could be added to an email database. New agents should make a conscious effort to put every person who comes into an open house, or every prospect they meet, into an email database to receive marketing material from them. Because the sales cycle for real estate can be quite long, staying at the top of a potential client’s mind is crucial to getting the deal at the right time.



In terms of for sale by owners and expired listings, you can purchase these leads. The most popular and commonly used are sites such as www.theredx.com and www.landvoice.com.

Fax Solicitations

Fax messaging should not be used to solicit business. The federal Telephone Consumer Protection Act and FCC regulations prohibit sending unsolicited advertisements and solicitations to a fax machine. Permission to send a fax message can be granted only by a signed statement that includes the fax number to which the fax may be sent. A penalty of \$500 to \$1,500 may be assessed for each unsolicited fax.

Newsletters



Many brokers have successfully used newsletters as a prospecting tool. Newsletters are more likely to be read if they include local information about events and people, local athletic team event dates and results, recipes, and important local telephone numbers, as well as real estate information such as mortgage rates and market sales data. A number of vendors supply newsletters, some of which can be readily customized. Members of the California Association of REALTORS® have access to a free newsletter that can be personalized by accessing www.car.org and checking on the newsletter sign-up balloon and then selecting Homeowner’s Guide. Newsletters can be mailed, emailed, and left in clubhouses and other public places.

EXPIRED LISTINGS

Never contact owners before their listing has expired. Attempting to solicit a listing away from another REALTOR® is a violation of the NAR Code of Ethics. When contacting the owners, you want to find out immediately if they have relisted the property with their agent or another agent. If they have, wish them well and end the discussion.

When a listing contract expires, it means the listing office was unsuccessful in procuring a buyer for a property during the contract period. Owners will likely sign a new listing contract with their agent if they are satisfied with the efforts of that agent. If not, the owners may try to sell their property without an agent. But, in most cases, they will list their property with another office. Your approach should be low key. You should realize that the owners are likely frustrated and even distrustful of agents. They may have heard a very positive presentation and assurances of success that did not materialize. If you can convince owners that you know why their property didn't sell and show them a plan likely to lead to success, you have a good chance at the listings.

If you can show why a property failed to sell and how you can succeed, you have an opportunity to list the property.

The reason a property failed to sell could be related to an agent who failed to market it properly. More likely, however, it relates to the price asked and/or the appearance of the property (exposure). Very simply, a home must be competitive in its marketplace to sell. When there are many sellers and few buyers, being competitive is not enough. A home must appear and be priced in such a manner that it stands out above the competition as a "best buy."

If owners are negative or antagonistic during a front-door approach, consider asking for a glass of water. Chances are you won't be refused because the simple act of helping you puts the owners in a better mood. Frustrated sellers need and want to be heard. Let the sellers go on about the failure of their last agent to secure a buyer and be empathetic toward them.

Then ask three questions:

1. Why do you think your home failed to sell?
2. What could have been done better?
3. Would you like to hear my analysis of why there isn't a Sold sign on your home right now?

An advantage of working expired listings is that owners generally now have more realistic expectations than they had when their property was originally listed for sale.

NEWSPAPER LEADS

Newspapers can provide a number of sources of buyers and sellers. When checking newspapers for leads, don't forget that there are other papers besides the large daily papers. There are "shoppers," or throwaway papers, usually devoted entirely to ads;

there are papers for groups, such as for mobile home owners; and there is a wide variety of ethnic and foreign language papers. All of these papers contain leads.

For Sale by Owner (FSBO)

A major reason owners try to sell without an agent is that they feel they are saving a commission. Another reason could be related to a prior unpleasant experience with an agent. The owners must be shown that working with an agent is in their best interests, and that the agent will in fact be earning the compensation.

A simple way to get to talk to a for sale by owner (FSBO) is to visit the home and tell the owner about one of the buyers you are working with and then ask, “If I had an offer from this buyer, would you want to see it?”

Because few people would not want to see an offer, the answer likely will be in the affirmative. Of course, this gives you the opportunity to view the home. You could then ask for a one-party short-term listing if you feel you have a prospective buyer who would be interested in the property.

Another approach after introducing yourself might be to ask, “Would you be offended if I asked to see your home?” Most owners will answer in the negative, because, again, to say otherwise would be implying that they are offended.

When viewing a for-sale-by-owner property, you want to come across to the owners as a person they could like. Compliment them on noteworthy things, ask questions, and show you are interested. Make suggestions that will help them sell. Ask how they are advertising the property, what the response has been, their reason for selling, what they will do when they sell, et cetera. Answers can be listing ammunition.

An excellent approach to owners who are advertising their own homes is a front-door offer of a for-sale-by-owner kit:

[Mr. Chan], I am [Gary Frank from Canyon Realty]. I can help you sell your home without any agent fees. Our office has put together a for-sale-by-owner kit that contains a For Sale sign, contracts, loan contacts, required disclosures, instructions for open houses, and a lot more information. We provide these kits absolutely free as a goodwill gesture. Of course, we hope that if you decide later you want professional assistance, you will consider [Canyon Realty]. I can give you one of these free kits now and show you how to use the forms, although it will take close to an hour to cover the forms and disclosures. Will you [and your wife] be home at seven tonight, or would eight be more convenient?

Your kit should be everything you discussed and more. Put warning labels on sheets that talk about subordination clauses, contingencies, owner points, and so on.

When you meet with the owners, give them the For Sale signs and ask to sit down to go over the forms. Suggest the kitchen table, because it is a nonthreatening environment and allows for a physical closeness. Go over the forms, explaining

the clauses, the importance of disclosures, and anything else your experience tells you is important for this seller to know. By the time you finish your presentation, the owners will probably be wondering if a sale without an agent is really as simple as they had imagined.

Ask the owner how he or she arrived at the price.

Next, ask, “May I inquire what you’re asking for your home? How did you arrive at that price?”

The owners’ price likely is based on a single sale or what they would like to get for the property. Continue with, “It would be presumptuous of me to tell you if the price is high or low, but our firm can prepare a comparative market analysis from our computer data. I would like to do a comparative market analysis on your home. This is, of course, provided at no charge.”

Chances are the owners will accept your offer. They have already received valuable material, and you have likely sold yourself as a professional. Your appointment to present the market analysis should be on the next day.

After you present the market data analysis, ask the owners if you could just take a few minutes to express why you feel they should consider having an agent. After giving them all this valuable material, the owners will feel obligated to answer in the affirmative. You can then go into a listing presentation. (See Units 5 and 6.)

A variation of this approach is to offer the owners the use of Open House signs and banners. Use the presence of signs and banners as a reason to follow up with the seller. “How’s our sign holding up, Mr. Johnson?” “Is there anything else I can help you with?” These questions provide the agent a reason to continue to follow up with the for sale by owner. Generally, most for sale by owners either end up listing with an agent or taking the property off the market. Consistent follow-up will put you in the front running when the seller does decide to list. You can find data on FSBOs and expired listings at www.theredx.com and www.intelius.com.

WEB LINK



Rental Ads

When a single-family or a mobile home is advertised for rent, it may be a case of an owner who really wants to sell but who needs income for payments. If the owners indicate they will give a tenant an option to purchase, you know they want to sell. Telephone numbers outside the area are more likely than local numbers to signify owners highly motivated to sell. Owner contact can be made face to face or by letter.

Whenever you receive a rental inquiry at your office or through canvassing, don’t dismiss the prospect because you don’t have any rentals. Prospective renters can frequently be turned into buyers with just a few questions: “Have you considered buying?” “Would you be interested in buying if you could buy with no or very little down payment and have monthly payments similar to or less than what you would pay in rent?”

If you can show prospective renters how they can be buyers, you gain a lead for your existing listings and increase the likelihood of closing a sale. If a prospective renter was formerly an owner, chances are she is not going to be happy as a renter.

Trades

People advertising willingness to trade usually want to sell. By explaining delayed exchanges (see Unit 14), you can show owners how they can sell and still have their trade. Keep in mind that some people advertising trades may be dealers.

Marriage and Engagement Announcements

These announcements can be a source of leads. Perhaps the couple getting married have one or more previous residences each that they want to sell. The couple may also be looking to purchase a new residence. It is also possible that parents of the couple may be wishing to downsize or relocate. These are all prospects worth talking to.

Birth Announcements

Birth announcements could be leads to listings of condominiums or mobile homes and even to sales of single-family homes.

Legal Notices

Notices of legal action can be an excellent source of leads for motivated buyers and sellers. Rather than checking through county records, consider subscribing to a legal notice newspaper in your county.

Foreclosure. When a notice of default is recorded, it indicates an owner is in trouble. Often the only help is a speedy sale. Keep in mind that just because a property is in foreclosure does not mean it is a good listing opportunity. Before listing, obtain a property profile from a title company. (A *property profile* is a computer printout showing the owner of the property and the liens against the property. It is a free service that title companies provide to the real estate profession.) Keep in mind that even if the liens against the property could exceed the property value, a short sale might be possible.

Legal notices indicate problems and problems = opportunities.

Probate. Heirs who inherit property often prefer cash. In other cases, the property must be sold to pay debts of the estate or to carry out the wishes of the deceased. Contact the executor or administrator of the estate for a listing.

Divorce. The largest asset of most families is their home. Because California is a community property state, divorce often means that a home must be sold so the assets can be divided.

Bankruptcy. In California, owners in bankruptcy may be able to keep their homes because of their homestead exemption. However, many people in bankruptcy seek a new start and often wish to relocate. A sale listing may therefore

be possible. Keep in mind that based on when the listing is taken, the bankruptcy court may need to approve the listing contract and subsequent payment of commissions.

Death notices. Although death of a spouse frequently means a sale, it can be difficult to solicit a listing after a death. We recommend that no approach be made for at least one month after a death, and then the approach could be to ask the homeowner's help in locating a home in the area for a particular family. An owner who is at all interested in relocating will bring it up.

Evictions. An eviction means an owner with a problem. When owners of income property don't have problems, they are not likely to be highly motivated to sell. When owners have problems, motivation to sell increases in relation to the seriousness of the problems. Eviction notices are a good source of motivated sellers.

Building permits. An individual who takes out a building permit could still own another home. Because of the length of the building period, that individual might intend to place the other home on the market later. When the building permit is taken out in the name of the builder, it could mean that a home is being built for speculation. In either case, building permit calls might produce excellent listings.

Code violations. Notices of code violations and/or fines indicate an owner with a problem property. Owners who don't want to deal with these problems can be motivated sellers.

Tax delinquencies. Owners delinquent in taxes might have financial problems. The solution to their problem could be a sale. These notices can be an excellent listing source.

When owners have legal problems or personal or family problems, the best approach is to ask the owner's help in meeting the needs of another. Any indication that you are contacting them because they are in serious difficulty would likely result in a defensive and negative reaction.

OTHER PROSPECTING METHODS

Advertising

Besides using it as a selling tool, advertising can be used to obtain listings.

Roy Brooks was a legendary estate agent in England. He gained celebrity status because of his unusual and very effective ads. He found that an advertisement for property to sell that was like everyone else's ads made his ad just one among many. He realized that ads for listings had to stand out from the others. To do this, he

advertised for particular prospective buyers. One of the ads Roy Brooks used was the following:

WE HAVE A RATHER REPULSIVE OLD MAN who, with his child-wife, is looking for an elegant town res. pref. Belgravia, Chelsea, or S. Ken. Price not important but must be realistic as he has, at least, his head screwed on the right way. Usual scale of commission required. ROY BROOKS.

Make your ad stand out.

Note: Before you use an ad such as this, get permission from the “repulsive old man and his child-wife.”

Look for Problems

As you drive around, look for problem properties: properties in need of repair, overgrown landscaping, properties obviously vacant, and properties that have had rental signs up for a long time. Also watch for For Sale by Owner signs.

Visible problems usually mean the need for a change in ownership, a problem you, as a real estate professional, are prepared to solve. You can locate the owners of these properties by checking with the county tax assessor’s office or a title company.

Internet Site

California Association of REALTORS® surveys illustrate the growing use of the internet by homebuyers. Only 28% of buyers utilized the internet in 2000. In 2020, 97% of homebuyers indicated that the internet was an integral part of their homebuying process. Of those who used the internet, 88% purchased their homes through a real estate agent.

Studies indicate that internet buyers devoted more time to research before working with an agent and spent just two weeks looking with an agent and viewed just 6.2 homes. Buyers who did not use the internet spent an average of seven weeks working with an agent and viewed 14.5 homes before making a purchase.

The growing importance of the internet reinforces the need for brokers to use internet sites to achieve maximum benefits. An office website or personal website should be referenced on all of your cards, signs, ads, and letters. Such a site could show your success in an area, as well as any value changes in the area. One way to show success is a “success list” of properties sold. The site also could show advantages of low interest rates, indicating that the time to sell or buy couldn’t be better.

The design of an internet site is not the place for economy. While there are self-help books and computer programs for designing your own site, and designers who advertise that they will prepare your site for \$200 or less, site preparation is not the place for bare-bones economy. Many sites use motion and sound to keep the prospect watching. View a variety of sites, including those of other brokers, and strive for a site designer who will better your competition. The prevalence of IDX searches allows MLS data to be displayed on the agent’s website directly.

This can be a cost-effective solution and gives the agent the ability to tell a buyer or a seller to search the MLS directly from the agent's website.

WEB LINK

To give you ideas for what can be done, visit the website of The Horne Team at <https://www.thesuncityexperts.com/>. While there is motion on this site, it doesn't appear in print. The main picture changes with views of Sun City as well as offerings.

Some brokers have home pages on their sites where a viewer can click "find a home" or "What does (Jones Realty) have to offer?" The latter sells your firm's competence and integrity.

The "find a home" portion of your site can result in calls from "half-sold" buyers you didn't know existed but who had visited your firm on a website.

WEB LINK

A single property can be presented on numerous separate websites. As an example, a home located in the Coachella Valley could be presented on www.Realtor.com and other national sites. It could also be on an area site. In addition, if the broker belongs to a relocation service or a franchise, or both, property could be presented on additional sites. General websites attract millions of viewers. Many brokers realize that these sites can be especially productive. It is not unusual for a brokerage firm to have their offerings on from 10 to 20 websites, including their own firm's site.

By checking competitors' internet presentations of their listings, you will see a significant variance. Some properties indicate "picture not available," while others not only have an attractive exterior photo but also allow the viewer to click on additional photos, a detailed property description, and even a virtual tour.

A visitor to your website might not be interested in your offerings and go elsewhere. You want to know who that visitor was and what his interests are. You can get this information with a nonthreatening offer of help. Offering to provide emails of new listings before they are even advertised is a great hook, because most buyers are interested in a first chance, especially in an active market. The visitor would then fill in price parameters, must-have and would-like features, and finally their name and email address.

You can also prospect for both buyers and sellers by using mailings or ads offering to supply owners with details of sales (by email), so that they can understand area values. They would register on your site, giving details of a home that they want comparables for. The emails they would receive would include photos and details, as well as sale prices of similar home sales. Because you are providing an owner with information of interest, a personal contact should result in a positive response.

Just as classified ads (discussed in Unit 8) are in competition with other classified ads, your internet property presentations are in competition with many others. (It is important that you incorporate what you will learn in Unit 8 into your website.)

WEB LINK



Websites of others can also be a source for leads. By checking www.forsalebyowner.com, you might find homes in your area that you might not have known were on the market. There are a number of other sites that include for-sale-by-owner listings, such as www.craigslist.org or www.forsalebyowner.com.

In Unit 8, you will learn many ways to use the internet, including social media sites and blogs.

Check Interested Parties

Property neighbors. When you have a listing of a home, land, or income property, contact adjoining property owners, as well as owners of similar property in the area. Neighbors are a source of both buyers and sellers. For residential property, the approach to neighbors could be “Would you like to help choose your new neighbor?” When neighbors have an interest in an outcome, they can be an effective source of prospects.

For income property, as well as farms and raw land, adjoining property owners are good buyer candidates. All many people want is “What’s mine and what’s next to mine.”

Investors, speculators, and flippers. When an investment property is sold, find out who the buyer is. The same holds true for lots and fixer-uppers. Contact these buyers to find out if they have further interests in purchasing property and, if so, what their interests are. It isn’t hard to find the active players in a market. Many of these buyers will welcome an additional pair of eyes, ears, and legs working for them. Keep in mind that these people can be prospects for both listing and selling.

Lenders. Check with local lenders about their **real estate owned (REO)** properties. Lenders have title because of foreclosure. Find out how to get a key to show the property, as well as what commission will be paid, if any.

Some brokers offer full service for lenders. They offer cleanup service and full maintenance services to protect the property until it can be sold. These services give them an advantage over other brokers as to exclusive listings besides creating another profit center.

Besides local lenders, contact the Department of Housing and Urban Development (HUD) and the Federal Deposit Insurance Corporation (FDIC), as well as the Federal Housing Administration (FHA) and the Department of Veterans Affairs (VA) for foreclosure lists. Many agents specialize in selling lender-owned property.

Chambers of commerce. Check with your local chamber of commerce. Ask to be notified of inquiries made by people or companies planning to relocate to your area. If you can reach them first by letter, phone, or email, you may be in a preferred position as a possible selling agent.

Membership in a chamber of commerce will help you obtain inquiry information in a timely fashion. Membership can also provide networking opportunities that can bring business. Many networking groups are limited to one representative from each industry. You don't want to end up in a group dominated by other real estate agents.

Open houses. Open houses can be a good source of both buyer and seller leads. Many people who stop at an open house can't be buyers until they sell their present homes. Some agents will hold open houses on homes listed by other agents within their firm if the property has an attractive exterior (curb appeal) and is on a high-traffic street. Each open house can build a pool of potential buyers with some similarity of interests. If you intend to specialize in an area, price range or type of property, conducting open houses that fall into the category you are interested in can help build a huge pool of potential buyers and sellers to contact. (Open houses are covered in detail in Unit 7.)

The endless chain method is the process of using prospects to recommend other prospects ad infinitum.

Endless chain. The basis of the **endless chain**, or referral, method of prospecting is to ask every prospect to recommend other prospects. The use of an endless chain can result in an amazing number of referral prospects. For example, if you secure the names of two prospects from every person you interview, you would get two names from your first prospect; these two should yield four; these four should provide eight; and so on. This can continue, eventually resulting in thousands who are at least potential clients, people whose needs have not yet been determined.

Your friends. One of the first things you should do on entering the real estate business is to make a list of all the acquaintances and friends you have made over the years. Your list should contain a minimum of 50 names. A good place to start is your holiday card list. Send these people an announcement that you are in the real estate business and indicate how proud you are that your work may give you an opportunity to help them in the future. Be sure to send announcements to the professional people who serve you and who over the years have had your faith and confidence—your doctor, dentist, attorney, and any other professional people you deal with. Because you do business with them, it is likely they will be willing to do business with you.

Another community resource that should not be overlooked is the people with whom you do non-real estate business. You have to buy food, clothing, gas, personal services, and so on. Tell the people who sell things or services to you that you are in the real estate business. These people come in contact with other people every day, and from time to time they hear of someone who is thinking of listing and selling a home or buying a new home. Such communication is commonly called **networking**.

Your sellers. A sale normally is part of a chain reaction. Sellers of property generally become buyers of other properties, and those sellers, in turn, buy again. Even before a property is sold, find out the intention of the owners. If they will be buyers within the area, you want to be the agent who will sell to them. If they

are leaving the area, consider that a referral fee could be possible from an agent in their new community.

Your buyers. Most people are glad they purchased their homes. If you sold houses to some of these satisfied buyers, you can turn this positive feeling buyers have about their purchases to your benefit. Stopping by with a small housewarming gift several weeks after they take occupancy will give you an opportunity to talk about their relatives and friends who have real estate needs. Whenever you get a listing in the area, contact former buyers by phone or email to see if they have friends who might be interested.

You can also use the approach of asking them to help another:

I could use your help. I'm trying to find a home for [a retired couple] who wish to live in your area because [they want to be close to their grandchildren]. Do you know anyone in the area who might consider selling or anyone who has had a change in family size because of marriage, divorce, birth, or graduation?

Note: Always use a real prospect, but never give out personal information without approval. Prospective buyers will generally react positively to solicitations for their benefit.

Your neighbors. Another broker's sign on a neighbor's home shows that you have failed to make your neighbors realize that you are a real estate professional who is available to meet their needs. When you enter the real estate profession, consider a mailing to your neighbors. Figure 4.3 is a broker letter to neighbors of a new sales associate.

FIGURE 4.3: **New Associate Announcement Letter**

UR

HOME REALTY

← Date and address

Dear _____:

[Judith Reilly], [your neighbor] who lives [at 111 Midvale Lane in Sunshine Estates], has recently joined our firm as [1. a sales associate 2. an associate broker]. [Judith] has been your neighbor for [four] years. [She] and [her husband] have [two children, Lisa, age nine, and Jeffrey, age seven, both of whom attend Midvale School]. [Judith is a graduate of Ohio State and previously worked in marketing.] [She] has just completed our training program and will be specializing in [residential sales] in [Orchard Ridge]. If you or any of your friends have any real estate needs, we hope you will contact [Judith]. I have enclosed one of [her] new cards.

Sincerely,

Enclosure: ← Card

Take a walk around your neighborhood with your child or your dog to give you an opportunity to talk to neighbors. Let them know you are in real estate and where you live. Hand out business cards. By asking questions you can find leads. In most neighborhoods, there are a few people who seem to know everything that is happening. These people should be developed as your extra pairs of eyes and ears.

In condominium complexes and mobile home parks, spend time around the recreational facilities. You will seldom have any trouble finding someone to talk to. By knowing what to ask, you can quickly discover what is happening in the area.

Centers of Influence

Another successful prospecting method is to cultivate the friendship of influential persons in the community or territory. These **centers of influence** can help you obtain prospects by referring people who can use your services. These influential people can tell others about you and tell you about people they know who might require professional real estate services. Centers of influence serve to bring you together with potential sellers and buyers.

The objective of cultivating relationships with centers of influence is to establish genuine friendships, whenever possible. It is important that they know their help will be appreciated in your search for contacts. Let your centers of influence know the results of their efforts. This will come naturally if the friendship is genuine, and it will encourage the person to keep helping you.

Some agents refer to these helpers as **bird dogs**. This term is not derogatory. It merely indicates that they point the way. Keep in mind that help won't come to you unless you ask for it.

Centers of influence are people who are influential in your community.

You must explain what you are looking for, such as a friend or acquaintance who has had a change in family size. Having several dozen extra pairs of eyes and ears working for you can provide a great many leads. The best bird dogs are people who help you because they like you and want to see you succeed. However, for continued effort on your behalf, these helpers must feel they are appreciated. Your appreciation can be verbal; better yet, take them to dinner or give a small personal gift to show your appreciation. While it is a violation of the real estate law to reimburse an unlicensed party for acts requiring a real estate license, compensation may be provided to an individual whose involvement is limited to putting two parties together. Prohibited acts would be paying fees to persons soliciting buyers or sellers, showing property, giving property information, or engaging in any form of negotiation.

Note: Don't give out personal information about anyone, even your own salespeople, without permission. Many people don't want information about their children given out.

Good Centers of Influence

- Prominent club members
- Friends
- Relatives
- Attorneys
- Doctors
- Accountants
- Physical therapists
- Dog groomers
- Hair dressers
- Prominent members of civic and charitable organizations
- Golf and tennis professionals
- Ministers, priests, and rabbis
- Bankers
- Public officials
- Teachers
- Health club employees
- Business executives
- People with whom you share a mutual interest, such as a hobby or recreational activity
- Service providers and repair persons

Community Service

Closely akin to the centers-of-influence method is prospecting through local community service groups. Making contacts by participating in community activities can not only bring in more business but also provide personal satisfaction from working for the benefit of others.

Community service organizations recommended for involvement include the following:

- Churches and other houses of worship
- PTAs
- Educational groups
- College associations
- Chambers of commerce
- Civic organizations
- Service groups
- Boys and girls clubs
- Boy Scouts and Girl Scouts
- Recreational clubs (ski, travel, biking, boating, etc.)
- YMCAs and YWCAs
- Political organizations
- Senior centers

Community activities can also provide these benefits:

- Opportunities to counsel fellow members in such areas as investments, property management, and commercial realty
- Constant exposure to referral sources
- Constant exposure to other property owners
- Personal development, by learning and growing through participation
- Development of a more professional image as a real estate licensee

Your peers will have greater respect for a colleague who participates in community activities. The key is to get involved with people and help fulfill their needs. In seeking contacts through community service groups, however, beware of overcommitment. It is important to develop the ability to say no gracefully. Overcommitting yourself can upset your timetable and also may jeopardize your health. Follow these guidelines:

- Work in only one or two organizations at one time; strive for quality, not quantity
- Anticipate time-consuming assignments before becoming involved
- Do not play personalities for an advantage
- Do not play politics

To stay aware of what is going on, participate where possible in carefully selected committees. Membership on the following committees has proved to be most helpful to licensees:

- Greeting committee (new members)
- Membership committee
- Social or party committee
- “Sunshine” (visit the sick, etc.) committee

Be cautious in using membership as a prospecting technique, because it is easy to turn off fellow members by being overly aggressive. Obtain help from others, but do not abuse them. When you first join a club or association, keep a low profile. It is advisable to do something for the organization and strengthen your relationships before you ask members for referrals.

Fundraising for a worthwhile charity is an excellent way to meet people. While there may be a negative reaction to having to open their wallets, you will have shown that you are a person with a positive community interest.

Build a Referral List

Agents must bring some sort of order to their prospect lists to avoid getting stuck with a briefcase full of names and little else. To build a list and successfully use referrals, the licensee should follow these guidelines:

Develop a systematic plan. This includes studying prospects as you talk to them. Ask for leads as soon after contact as feasible, and ask the prospects how you can improve your services.

Keep track of the results of your methods.

Utilize all sources of information. This includes friends, neighbors, professionals, people in businesses of all kinds, and social contacts.

Make them all aware that you are in the real estate business and would appreciate all referrals.

Follow up referrals by reporting back to the referrer. Also important is to use a computer contact management system to record referrals for future calls. A person giving a negative response now may still be in the market in the future.

WEB LINK



There are a number of software programs for contact management. Specific programs for real estate professionals are available through www.zoho.com, www.insightly.com, www.capterra.com, and https://learn.placester.com. Check what programs successful agents are using and get their opinions.

FARMING

Farming is working or prospecting an area or area of interest for sellers as well as buyers. The area chosen for farming can be geographic or nongeographic (a special interest area). Your farm should be chosen based on your personal goals, interests, and your specific market area. The longer you work a farm, the more productive it becomes. Farming requires constant attention and regular contacts.

Geographic Farms

A **geographic farm** is a specific area with definite boundaries that is worked by an agent. Within the specific area, the agent seeks a dominant share of the marketplace.

In choosing a geographic farm, you should look for areas without a dominant market leader. If one salesperson or firm has more than 20% of all the sales, it could be a hard area to work. You also want an area with an abundance of properties in the price range and type you feel comfortable working with. Of course, the turnover rate is important. You want an area that will provide a reasonable inventory. The turnover rate can be different in divergent price categories. An average turnover rate in a stable market is about 7.5%. A geographic area chosen below 5% turnover rate would be difficult to work unless there was little competition.

The best geographic farms tend to be homogeneous areas having similarly priced homes, or they share other characteristics such as age, attitude toward recreational activity, family type, and so forth. Areas of common identity, such as a particular

Farming yields a crop of listings.

subdivision, or mobile home park generally make good farming areas. By farming an area they already live in, agents will have existing contacts and exposure within the farm area.

In choosing a farm area, consider how you relate to the people in the area or group. If you are comfortable with and have a special interest in the area or group, you are likely to put forth the effort required for success.

Some experts claim that a farm area should not exceed about 500 homes. We believe the size should be based on the size of the area, considering reasonable, identifiable boundaries as well as the agent's available time and techniques used to devote to farming activities. The fact that there are no hard and fast rules governing farm size can be shown by **megafarming**. Some agents farm areas of several thousand homes. Some of these agents use salaried assistants to help them. The internet is an easy and almost cost-free method of farming and allows for larger farms. Still other agents are able to handle larger than normal farms by specializing in listing activities rather than sales.

A farm takes time to produce a crop of sellers and buyers. Like an agricultural farm, it must be constantly worked to be productive. Generally, agents working geographic farms strive for a minimum of one contact per month with every owner within their farm area. The contact might be direct mail, the internet, a phone conversation that does not violate do-not-call rules, or a face-to-face meeting. Besides letters and personal contacts, email newsletters are very effective at minimal cost. Many agents blog on neighborhood group websites and/or have their own blog website. Getting to know owners and, more important, letting them get to know you places you in an excellent position to work with owners as buyers or sellers when a sale or purchase is needed or desired.

Nongeographic Farms/Social Farm

A **nongeographic farm** is a particular segment of the marketplace defined according to property differentiation or buyer/seller differentiation. For example, an agent could choose to work a particular ethnic group. If an agent works a particular ethnic or nationality segment of the population, it would be a significant plus if the agent were a member of the group and had the necessary language skills of the group.

An agent might work only a type of property for small investors, such as duplexes. There are a number of agents who specialize in horse properties (properties zoned for horses).

A number of agents farm expired listings, providing owners with updates on listings and sales, as well as seeking personal contact. If your broker has an internet address (URL) tied to your farm area, it will show broker commitment to your area. The site could be both a personal site and one that is connected to properties and blogs. It can also be a marketing tool. Brokers who specialize in auction sales often vigorously farm expired listings for their auction sales.

A nongeographic farm is a segment of the market that is established by the difference between properties or the difference between buyers and sellers (property differentiation or buyer/seller differentiation). For instance, agents may work a particular demographic within the population such as singles, singles with children, specific income categories, ethnic groups, et cetera. Other agents may choose to farm expired listings, farm properties, multifamily dwellings, industrial properties, residential lots, et cetera.

In a nongeographic farm, door-to-door canvassing will seldom be effective. Acquiring membership lists of organizations and even religious groups, as well as buying specialized mailing lists, will allow you to work this type of farm by direct mail.

The internet can be a valuable source for leads when working a nongeographic farm. Using one of the search engines, you should be able to zero in on your area of specialty within your marketing area. You will find organizations, companies, or groups that can provide leads as to buyers, sellers, lessors, or lessees. You will also find organizations, companies, or groups outside your marketing area that have access to information within your marketing area.

Whatever type or area of farm you choose, keep in mind that farming must be continuous. If you slow down your efforts, you will begin to lose market share from your farm at a fairly rapid pace. Although every successful agent does not farm, either by geographic areas or by special interest, every successful agent does prospect for buyers and sellers.

Niche Marketing

Specializing in a narrow segment of the market is known as **niche marketing**. As you gain exposure to the many possibilities of niche marketing, you may decide to choose a niche that you feel best meets your personality, experience, and needs.

In choosing a niche that serves a particular group of buyers or sellers, you must be cognizant of both your moral and your legal responsibilities concerning discrimination. (See Unit 2.)

Niche marketing is specialization in a narrow segment of the marketplace.

An excellent way to find a niche category of buyers is to go through your old files to see if you have been serving a certain group more than other groups. When you have identified a customer segment, draw a profile of its demographic and psychological characteristics. Prospecting and after-sale surveys are two avenues for accumulating this kind of information. When you analyze past customers, try to determine why they came to you, how effectively you helped them, and the areas in which you feel you may have been weak. This will help you put together a plan to draw more people like them to your customer segment. You also will gain more from your advertising and marketing strategies if these strategies are coordinated around those surveys. Customer segment specialization helps you build a known area of expertise that will enhance your reputation, result in referrals, and keep your customers coming to you, instead of going somewhere else.

Compass, a large brokerage firm, targets luxury properties as well as particularly desirable consumers. It also targets affluent areas such as San Francisco, New York, and Los Angeles. Your niche could be the property type, such as foreclosures, mobile homes, homes with acreage, vacation rentals, investment buyers, or low-down payment buyers.

Bulk Buyers

A number of brokers specialize in locating property for buyers of multiple houses. Some buyers buy for rental purposes. A number of REITs (Real Estate Investment Trusts) have been major buyers. Invitation Homes, Inc., (stock market symbol INVH) currently owns over 80,000 rental homes.

Other buyers are flippers. They buy, make needed repairs, then resell the properties. Zillow decided it could dominate this market. The Zillow website is best known for showing available area homes and its Zestimate of home values; it got involved in buying homes direct from owners, making repairs, and listing the properties with agents for sale. Zillow used data and algorithms as the basis for cash offers. An algorithm is a set of rules that determines a price of a property. Zillow believed value could be determined by formula.

In October 2021, Zillow put the brakes on its buying programs. Zillow claimed problems of supply and labor shortages coupled with the pandemic created a buildup of homes with few buyers.

KeyBanc Capital Markets, Inc., is a source of capital-raising strategies and advisory services and it provides customized solutions to a firm's financial problems. It analyzed 650 homes owned by Zillow and found two-thirds of the homes were worth less than what Zillow had purchased them for. The findings did not consider repairs and holding costs. Zillow cut prices in the third quarter of 2021 on nearly half of its U.S. listings. Zillow estimates a write-down of over half a billion dollars for this venture.

While Zillow has ended its iBuying program, Opendoor Technologies, Inc., and Offerpad Solutions, Inc., are still buying. They believe their algorithms provide more protection in that they seek greater margins.

DEVELOP A PROSPECTING PLAN

Without a definite prospecting plan, prospecting becomes more of a “when you think about it” activity. The results will be far less than optimum. Figure 4.4 shows a sample prospecting plan.

You can evaluate the effectiveness of your prospecting plan by keeping track of the sources of new prospects as well as the results of working with the prospects. Quality of leads is really more important than quantity of leads.

By considering the time spent on your prospecting activities, you may discover that your interests would be better served by a reallocation of time, a change in your plan, or both. Your initial prospecting plan should not be cast in stone. It is a guide that may change, based on your interests and effectiveness in working with different types of situations.

FIGURE 4.4: Sample Prospecting Plan

1. Each Monday morning call on the weekend FSBO ads as well as FSBO signs you have observed so you can view for your buyer clients.
2. Contact owners within a one-block radius of every new listing taken within three days of listing.
3. Send letters or make personal contact each Friday morning on foreclosures and evictions listed in a legal newspaper.
4. Contact at least one former buyer each week to ask about friends and/or relatives interested in your area or neighbors who might be relocating.
5. Have lunch at least once each week with a person who has provided or can provide referrals.
6. Make a minimum of 30 contacts each week to locate a home for prospective buyers with whom you are working.
7. For new investment property listings, contact owners of similar property within the neighborhood of the listing. (You need not be limited to your office listings.)
8. Conduct at least one open house each week.
9. Ask at least three people each week for referrals and buyer-seller leads.
10. Contact people whom you have previously asked for help at least once each month.
11. Send weekly e-mails about new listings to previous buyers and sellers, as well as any new contacts you are working with.
12. Give out at least five business cards each day.

Social Media

The term *social media* refers to websites and applications that allow users to interact by participating in social networking. It is sharing of information and experiences. In 2021, 77% of real estate professionals used social media as a marketing tool.

Facebook (Meta Platforms, Inc.) is the largest of social networks. You can share photos, updates, engage in discourse, and even include videos. Facebook Live (Meta for Media) allows live video streaming. What you put on the Internet may be available to the whole world. Because your personal information may be available to the whole world, it may be misused.

A Facebook business page can be linked to your office website, personal website, MLS, and financing.

Anything unique on Facebook can attract viewers such as unusual photos or videos of a celebrity home. Don't duplicate a long list of properties such as what can be found on Realtor.com®, but have a homepage connection to such websites.

The use of an old photo captioned "Our City 100 Years Ago" will attract attention, especially if the photo is changed on a daily or weekly basis.

A video of the most expensive home on the market will attract attention, but you also should indicate where the price range begins. You can showcase an open house and educate your viewers.

YouTube

YouTube is a video sharing service that allows users to watch, comment, upload, and share their own views. It can be used for video blogging by preparing your own video presentation. Registered users can offer their own material. Unregistered parties can only view.

Viewers use YouTube to search for various areas, tour homes, locate specific features, check testimonials, and obtain general information. YouTube provides guides to set up and manage a YouTube channel.

Twitter

Twitter is an online news and social networking site where users interact with messages known as “tweets.” Tweets are restricted to 280 characters, so abbreviations are common. You must register as a user to post tweets, but anyone can view them. In 2021, there were 205 million daily active users. You should use a Twitter name that identifies you as a real estate agent. For example, JONES SELLS HOMES@URhomerealty.

For cold canvassing, you can use a Twitter search to find people in your area on Twitter. You can start a conversation, provide news, etc. You can unload your website by posting your URL. Great ideas can be obtained following top-producing agents on Twitter.

Snapchat

The Snapchat app allows you to instantly share photos with others as well as add text and videos. The app is free.

TikTok

This video-focused social media website has been an exceptional marketing tool. It allows buyers to imagine ownership and provides an opportunity for a meaningful dialogue.

Instagram

Instagram is a simple way to share photos and videos. You can record testimonials, provide homeowner tips for increasing salability of homes, provide time-lapse videos, and share material with your other social network assets.

Pinterest

Pinterest is a mobile app designed to discover information on the web. You pin images on an online board with links to your website. To create interest, consider photos of the home of a celebrity or the most expensive listing in the area. Your board could feature an architectural style. You don’t want to appear as a Zillow or Trulia website. You want to attract the viewers’ attention. You will get repeat viewing by updating the material.

LinkedIn

This is a business-oriented website with mobile apps. It allows you to create a personal profile and emphasize your area of activity. With so much data available, prospective clients will want to check out parties they are considering working with.

A new agent should become familiar with the major apps in use and register with them. However, an active presence could leave the agent with little time to list or sell. To start, be selective in your use of social media. Many successful agents use administrative assistants who handle most of the agent's social media contacts. Firms are available that handle profile postings, news items and other material for your blog and/or social media accounts.

Your Own Website

Developing a personal website including your resume is a good way to market yourself as well as properties. You can include your own listings and links to other office listings. You can offer free loan qualifying and/or updated listings and sales data as well. All of your social networking sites as well as printed data should include a link to your website.

Selling yourself will lead to selling others on your services which will lead to successfully completing real estate transactions.

Data Mining

Data mining is the process of discovering patterns in large amounts of data. You can discover the following:

- Listings expiring unsold today
- Profile of buyers
- Profile of sellers
- Valuation per square foot based on the property computer data

Internet programs are available for real estate data mining.

SUMMARY

Prospecting is a process used to locate prospective buyers and sellers of real property. There are many methods of prospecting, including door-to-door canvassing, direct mail canvassing, emails, expired listings, newspaper leads (For Sale by Owner ads; rental ads; trades; engagement, marriage, and birth announcements; and death notices), legal notices (foreclosures, probate, evictions, building permits, code violations, bankruptcy, tax delinquency), advertising, looking for problems, the internet, social media, property neighbors, investors and speculators, lenders, chambers of commerce, open houses, endless chain referrals, your sellers, your buyers, your neighbors, centers of influence, and community services.

Telephone solicitation has been significantly limited by the do-not-call regulations. Emails must comply with CAN-SPAM regulations, and fax solicitations are limited to recipients who have given written permission for the fax.

The use of the internet has grown in significance, allowing buyers to visualize properties before the first contact.

Farming is working a particular segment of the market intensively. It can be a geographic area or a nongeographic area, which could consist of a certain type of property or an ethnic group.

A prospecting plan forces agents to evaluate how they will prospect and to evaluate results. It is important to have a contact management system so that contacts don't slip away.

CLASS DISCUSSION TOPICS

1. Be prepared to role-play a door-to-door canvassing situation with another student.
2. Identify what you feel would be logical geographic farms in your area, as well as nongeographic farming opportunities.
3. Prepare a prospecting plan for yourself. Include goals and time to be spent executing the plan.
4. List what you expect will be your five best sources of listings in order of effectiveness.
5. Identify three centers of influence that should be useful to you in prospecting.
6. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. The CAN-SPAM Act puts controls on unsolicited
 - a. fax messages.
 - b. misleading emails.
 - c. residential phone calls.
 - d. real estate assistants.
2. You may legally pay a referral fee to an unlicensed person who
 - a. shows listings to prospective buyers.
 - b. assists in sale negotiations.
 - c. introduces a prospective buyer to the broker.
 - d. tells buyers about the beneficial property features.
3. Direct mail solicitation for listings is more effective if you
 - a. use window envelopes.
 - b. use a mailing machine and bulk rate.
 - c. use mailing labels.
 - d. indicate you will be contacting them.
4. Under do-not-call regulations, which call would be improper?
 - a. Calling for survey purposes
 - b. A call to a business phone
 - c. A call within three months of an inquiry
 - d. A call on a For Sale by Owner ad to solicit a sale listing
5. Which internet ad category is likely to provide listing leads?
 - a. Homes for rent
 - b. Leases/options to purchase
 - c. Mobile homes for rent
 - d. All of these
6. Legal notices provide good leads for listings. Which is *NOT* a legal notice?
 - a. Eviction
 - b. Foreclosure
 - c. Probate
 - d. Vacancy
7. Which would be an indication that an owner might be interested in selling an income property?
 - a. A high vacancy rate
 - b. Tenant evictions
 - c. Code violations
 - d. All of these
8. Endless chain refers to
 - a. the long-term effects of advertising.
 - b. obtaining additional prospects from every lead.
 - c. the fact that your buyer will eventually become a seller.
 - d. the fact that most buyers are sellers and sellers are buyers.

9. The term *farming* as used in real estate refers to
 - a. determining what your market area will be.
 - b. operation by season, such as a listing season, open house season, selling season, and so forth.
 - c. specialization in a particular field of real estate activity.
 - d. working or prospecting a geographic area or special interest area for buyers and sellers.
10. An example of a nongeographic farm would be specialization in
 - a. mobile homes.
 - b. income property.
 - c. lots.
 - d. any of these.

5

UNIT FIVE



LISTING PRESENTATION PACKAGE

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- describe a comparative market analysis;
- explain how to estimate seller proceeds;
- list what should be included in a listing presentation; and
- describe the information to be included in buyer listing material.

KEY TERMS

adjusted selling price
comparable properties
comparative market
analysis

estimated seller's net
proceeds
for sale by owner

listing presentation
manual

PREPARATION

Getting to the point of an effective face-to-face presentation takes a great deal of effort. An attempt to “wing it” and come in unprepared is more likely to result in failure than success. Leads take time and money to develop into a presentation. Don't waste your opportunity. You should have the material to justify the offering price of the property, to be able to convince the owners that agency representation is in their best interests, and to promote yourself as a professional who understands their needs and is able to meet them.

If your appointment was based on an offer of a **comparative market analysis** (CMA), then we recommend you start at this point. However, if the owners have indicated an interest in listing their property, you might want to start with the listing presentation material.

COMPARATIVE MARKET ANALYSIS

The comparative market analysis (CMA) is really a comparison analysis used by real estate agents to aid in determining a proper list price for a property. Often owners believe their home is worth far more than the CMA would indicate as a fair market value. Your comparables must be presented in an honest, logical, and convincing manner so that the owner realizes that if the property is to sell, it must be priced based on the market. The CMA provides information on **comparable properties** that have been placed in the marketplace, so that they can be compared with the property to be evaluated to determine an offering price. (Comparables are often called *comps*.) Similar property currently on the market is the competition the property owners must go against.

The CMA is not an appraisal. Only certified or licensed appraisers can appraise property. The CMA should be used for single-family residences and for multifamily residential properties of up to four units. In some cases, the CMA can be used for lots. However, it is not an effective tool for larger residential income properties or for commercial or industrial properties because of the difficulties in locating reasonable comparables.

When relevant property data are selected, the CMA reflects the realities of the marketplace. It should include the following three separate areas:

1. On market now
2. Reported sold prior six months
3. Reported expired prior six months

It is important to have information about all sales in the immediate area over approximately the past six months. If there have been relatively few sales, you might have to go back to expand the analysis to include similarly desirable areas. Similarly, if there were a great many similar sales, the time period could be shortened or the sales area compressed, or both.

While data about pending sales would be valuable and should be included in your CMA if you have direct knowledge of the transaction, the price information is not usually available as it is not reported by the MLS until transactions are closed.

An agent could conceivably be liable for damages if a CMA negligently omitted recent similar sales or used unrealistic comparables that resulted in the owner selling a property for less than fair market value. If a court determines that a CMA was prepared to intentionally mislead an owner as to value, then a court might award the owner punitive damages in addition to compensatory damages. For lender-owned properties, you should label them as lender owned and indicate

they are offered “as is.” Short sales and foreclosure sales should also be indicated as such.

The *on-market-now list* (current listings) merely indicates to an owner the prices that competitors (other owners) are asking for their products (homes). Other owners are competitors because they are seeking to attract the same buyers. The on-market-now list shows an owner what a prospective buyer will see and how the owner’s pricing will compare with that of the competition. It does not indicate what an owner can expect to receive from a sale.

By using comparable properties, the comparative market analysis reflects the reality of the marketplace.

The *reported-sold-prior-six-months list* is more valuable than the list of current properties on the market because it shows actual sales prices. In a market undergoing change, the older the data, the less reliable they are. Prices paid six months ago could be significantly higher than a seller might expect to receive today if the market is falling. On the other hand, prices paid six months ago could be lower than might be anticipated today if the market is rising. Therefore, strive to obtain data covering a period of about the past three months. Use older data only when more current data are not available; even then, older data should be adjusted for market changes.

Adjustments
+ Add for inferior
– Subtract for superior

No two properties are identical. Properties differ by size, age, condition, design, area, view, orientation, and amenities. Adjustments to comparable properties should be made based on the property that is the subject of the CMA. For example, if the comparable property had a better view than the subject property, then the sale price of the comparable would be reduced. If the comparable had two baths and the subject property had 2½ baths, the adjustment would be a higher price for the comparable. The adjusted price is known as the **adjusted selling price**.

Subject Property	Comparable Property	Adjustment to Comparable
2-car garage	3-car garage	–
2½ baths	2 baths	+
9,000 sq. ft. lot	12,000 sq. ft. lot	–
Excellent condition	Needs work	+

There may be sales prices that seem unusual. These too-high or too-low prices are often the result of market imperfections, as covered in Unit 1. Short sales, auctions, and lender “as is” sales could require adjustments. It is also possible that the price paid reflects particular problems or benefits of a property that are not evident from the listing data provided. While prices of sold comparables can be expected to vary within a 10% range of what you consider the value to be (mean point), a variation of 20%, not reflected by the property itself, might be an aberration and not reflect a true market picture. Before you use figures, pull out the old listings and make certain you are not comparing apples and oranges. Information about a property that is significantly different in terms of utility and desirability will give an owner a false sense of value.

The *expired listings* (reported-expired-prior-six-months) *group* is the list of losers. These properties are losers because they failed to sell. Like properties that sold, the more current the expiration of a listing, the more valuable it is for comparison

purposes. Often, a property fails to sell because it is overpriced in relation to its competition. From your data, you will likely find that the average list price of similar homes that failed to sell will be higher than the average list price of homes that sold. Listing prices might be significantly higher than the actual selling prices of the homes that sold. This information can inform owners in a powerful manner that you will not be doing them a favor if you overprice their property. In fact, you could be doing the owners a disservice because the likelihood of selling the property will be decreased. Even when an owner merely hopes for a higher price but will take less, overpricing will keep buyers away. The reported-expired-prior-six-months group also should reinforce your own knowledge that an overpriced listing is not an asset. Instead, it is a liability because it will steal the time and money you spend promoting it with a lesser likelihood of success.

Obtaining Comparables

Comparables are easy to come by. After becoming a member of the local association of REALTORS®, you can log on to the multiple listing service and pull comps from the computer, input the area desired, the square footage, and other amenities to give you a list of comparable homes that have sold recently in the area. You can also perform a radius search. The advantage is speed—the computer produces data requested within seconds. You still need to evaluate the data to determine which sales are comparable and should be used. You can use the computer to check the current listings as well as the expired listings in the area. There are also services that will prepare comparables for you.

Personalized CMA

If you treat the CMA you have prepared as a valuable document, it will increase the owners' feeling of value. When you give owners a CMA, you want them to feel that you did some hard work on their behalf. A knowledge that you are working for them goes a long way toward the signing of a listing agreement.

Some offices bind a CMA with a plastic ring binder and prepare a nice cover, using their computer printer. The cover indicates that the CMA was prepared for the named owners by the agent and also indicates the basis of the information enclosed. Rather than use a paper presentation, some offices use a laptop computer for their visual presentation. For comparables, they can show virtual tours. The computer presentation allows a more realistic comparison.

The personalized CMA starts with a sheet on the owners' property. It shows owners that you appreciate their home. Be certain that the narrative includes features that owners particularly pointed out to you when they showed you their home. Owners must feel that you have carefully evaluated the property.

Include a view of their home, as well as of the comparables. You should be able to download them from MLS information on the internet. If you don't have a good photo but the comparable has good eye appeal, take the time to get a photograph. A photograph of a house that looks as nice as or better than the home you are attempting to list for sale, coupled with a list price or sale price less than owners

have indicated they desire, can go a long way toward putting owners in a realistic frame of mind. It's trite but true: "A picture is worth a thousand words."

If a comparable has features that the home you want to list lacks, Make certain it is covered in your visuals. It emphasizes the strength of the competition.

Your CMA data always should be as accurate and as current as possible. It should lead to your estimate of the price range in which the owners' home could be sold. This estimate should consider the owners' property, comparable sales, and market changes. A range is more realistic than a single price because it allows for minor variations in the marketplace. Be scrupulous in preparing your CMA. Again, using only the comparables that support your own position can be considered fraudulent.

Although an owner might want to list at a price toward the top edge of the range, by using the range, you have prepared the owner to consider any offer within the range as being a reasonable reflection of value. In a sellers' market, with many buyers and few sellers, the range is likely to be far narrower than it would be in a buyers' market, with many more prospective properties available than there are buyers. So, although you show the range, you might want to recommend a listing at the midpoint or even near the low limit of the range, depending on market conditions and the owners' need for a quick sale. Time to sell and likelihood of a sale are affected by price. The reasoning for your recommendation should be made clear by the attachments to the CMA.

CMA Software Programs

WEB LINK



There are a number of software programs that will make CMA preparation relatively easy and provide a professional-appearing document. These programs use photographs and property details to help you arrive at a recommended list price. We have included CMA material from ToolkitCMA™, a web-based software program of Realty Tools, Inc. (www.realtytools.com) as Figure 5.1. Many brokers now use a cloud-based CMA system available through their MLS service.

Computer people use the term *GIGO*, which stands for *garbage in, garbage out*. If your comps were not realistic, you would have a hard time developing a trend. A sale far outside your anticipated range is an aberration, but it should be considered in determining an expected sales range. (See Figure 5.1 and Figure 5.3 through Figure 5.6.)

This material can be a help not only in listing at the price indicated by your CMA but also in listing below the price your CMA recommends as a list price when the seller is strongly motivated to sell. Often a sale at a below-market price is in an owner's best interest, when compared with the alternative of not procuring a buyer during the listing period or even facing foreclosure. By using your laptop computer to present your CMA, you can use listing photos, including virtual tours, which will give owners a realistic understanding of the marketplace.

Let Owners See the Competition

Often owners want a price that cannot be justified by market conditions as revealed by your CMA. They need a harsh dose of reality. Some agents will conduct a short excursion with the owners to several comparable properties on the market. The agent asks the owners to compare the features of their home and the homes viewed. The owners are then requested to guess the price asked of the various properties. When the agent tells the owners what the list price is, it can serve as an aid to helping owners understand the reality of the current market.

It is an unethical and unfair practice to take an overpriced listing with the secret intent of then trying to influence the owner to reduce the price or to take the listing to sell other properties. Some agents have been known to show an overpriced property to make another property appear to be bargain priced.

Owners who insist on a price above what you consider to be a fair market value range should realize the following:

1. The higher the price, the longer it will take to sell the property.
2. The higher the price, the lower the chance of sales success .
3. Even if the sale is successful, it is likely to fall in the fair-market range or less.
4. If the price is set unrealistically high, chances are the sale will fail because the lender's appraisal will not justify the sales price.

FIGURE 5.1: CMA Material from ToolkitCMA™

A.

Comparative Market Analysis Summary

Currently On The Market

Address	Neighborhood	Style	Yr Blt	Beds	Bath	Sold Price	List Price
2 Symphony Cir	Laurelford	Modern	2008	4	3 1/1	\$789,000	\$789,000
12218 Cleghorn Road	Laurelford	Modern	1986	4	2 1/2	\$914,900	\$914,900
13213 Beaver Dam Rd	Ivy Hill	Classic	1984	4	3/2	\$849,900	\$849,900
84 Warren Rd	Hillside	Colonial	1954	5	4/1	\$885,000	\$885,000
20 Laurelford Ct	Laurelford	Colonial	1992	4	2 1/1	\$892,000	\$892,000
9 Jules Brentony	Shawen	Colonial	1995	4	3/1	\$898,900	\$898,900
510 West Padonia Rd	Springhill Farm	Modern	1991	5	4/1	\$899,500	\$899,500

Average of 7 Properties: \$861,314 Min: \$789,000 Max: \$899,500 Median: \$885,000

Under Contract

Address	Neighborhood	Style	Yr Blt	Beds	Bath	Sold Price	List Price
13707 Cuba Rd	Hillside	Cape Cod	1992	2	2 1/1	\$839,000	\$839,000
9 Ivy Reach Court	Ivy Hill	Colonial	2008	4	2 1/1	\$842,925	\$842,925
3 Indian Spring Court	Shawen	Colonial	1995	6	4/1	\$850,000	\$850,000
15 David Luther Ct	Laurelford	Colonial	1990	5	3/1	\$899,000	\$899,000
11 Forest Ct	Laurelford	Colonial	1993	2	2 1/1	\$899,000	\$899,000

Average of 5 Properties: \$865,985 Min: \$839,000 Max: \$899,000 Median: \$850,000

Recently Sold

Address	Neighborhood	Style	Yr Blt	Beds	Bath	Sold Price	List Price
19 Chris Elliot Ct	Ivy Hill	Colonial	1989	3	3/1	\$775,000	\$843,000
12 Cte Padonia Rd	Laurelford	Modern	2008	4	3/1	\$755,000	\$789,000
4 Chamael Ct	Ivy Hill	Colonial	1991	4	3/1	\$775,000	\$789,000
12002 Beaver Hill Rd	Shawen	Colonial	1995	6	4/1	\$780,000	\$850,000
12993 Jerome Jay Dr	Laurelford	Colonial	1980	5	3/1	\$830,000	\$899,000
24 Springhill Farm Ct	Springhill Farm	Cottage	2003	4	3/1	\$850,000	\$899,000
508 Shawen Rd	Hillside	Classic	2003	5	3/2	\$835,000	\$885,000
205 Warren Rd	Laurelford	Colonial	1993	2	2 1/1	\$885,000	\$899,000

Average of 8 Properties: \$808,200 Min: \$725,000 Max: \$885,000 Median: \$810,000

Off The Market

Address	Neighborhood	Style	Yr Blt	Beds	Bath	Sold Price	List Price
10 Lovetton Cir	Hillside	Classic	1994	5	4/1	\$885,000	\$885,000
64 Bowwood Lane	Laurelford	Colonial	1992	4	2 1/1	\$898,900	\$898,900
9 Westcott Ct	Shawen	Colonial	1995	4	3/1	\$898,900	\$898,900
23 Chicost Rd	Springhill Farm	Cottage	2003	4	3/1	\$899,900	\$899,900

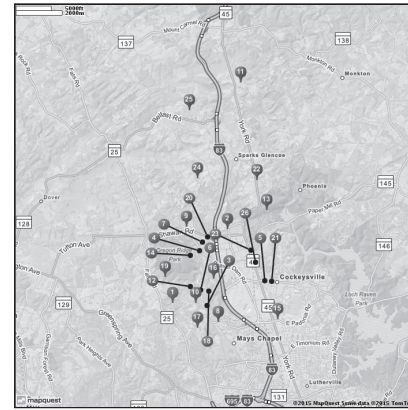


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B.

Map of Comparable Properties



Ref. #	Status	Address
1	Subject Property	7 Deep Run Court
2	Currently On The Market	2 Symphony Cir
3	Currently On The Market	12218 Cleghorn Road
4	Currently On The Market	13213 Beaver Dam Rd
5	Currently On The Market	84 Warren Rd
6	Currently On The Market	20 Laurelford Ct
7	Currently On The Market	9 Jules Brentony
8	Currently On The Market	510 West Padonia Rd



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C.

Subject Property Profile for

7 Deep Run Court



The following features have been identified to aid in the search for properties that are comparable to yours. This will help in determining proper pricing for your home.

City: Hunt Valley	Neighborhood: Orchard Valley	Year Built: 1988
Fin SqFt: 2160	Lot Desc: Backs To Trees	Lot Size: 1.04
Style: Colonial	Levels: 3	Bedrooms: 3
Bathrooms: 2 1/1	Const: Cedar Siding	Roofing: Cedar/Shake
Basement: Fully Finished	Basement: Walkout Level	Heat: Heat Pump
Fuel: Electric	Cool: Central A/C	Parking: Garage
Garage Spaces: 2	Enter Feat: Deck	Water: Well
Sewer: Septic	# Fireplaces: 2	Amenities: Auto Gar Dr Opn
Amenities: Built-In Bookcases	Amenities: Mba/Sep Shwr	Other Rms: Den/Study/Lib
Other Rms: Family Room		



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D.

Comparable Properties



Currently On The Market 2 Symphony Cir

List Price: \$789,000	Lot Size: 1.14 Acres	Area: Laurelford
Yr Blt: 2008	Style: Modern	Elem Sch: Hunt Valley
Fin SqFt: 5454	Levels: 3	Middle Sch: Ridgely
Bedrooms: 4	Const: Cedar Siding	High Sch: Cockeysville
Bathrooms: 3 1/1	Const: Stone	Amenities: Walk-In Closet
Heating: Heat Pump	Const: Stone	Amenities: Wet Bar
Fuel: Electric	Parking: Driveway	Other Rms: Family Room
Cooling: Central Air	Garage Spaces: 2	Other Rms: Game Room
Water: Well	Basement: Finished	Other Rms: Game Room
Remarks: Gorgeous home available for move in immediately! Inground Pool in back! House, Fabulous Master Bedroom, Spacious Rooms!		



Currently On The Market 12218 Cleghorn Road

List Price: \$814,900	Lot Size: 1 Acre	Area: Laurelford
Yr Blt: 1986	Style: Modern	Elem Sch: Pot Spring
Fin SqFt: 3692	Levels: 3	Middle Sch: Cockeysville
Bedrooms: 4	Const: Brick	High Sch: Cockeysville
Bathrooms: 2 1/2	Const: Stone	Amenities: Walk-In Closet
Heating: Heat Pump	Const: Stone	Amenities: Wet Bar
Fuel: Electric	Parking: Driveway	Other Rms: Family Room
Cooling: Ceiling Fan	Garage Spaces: 3	Other Rms: Study/Library
Water: Condition	Basement: Full	Other Rms: Study/Library
Remarks: PARK-LIKE GROUND, MASTER BEDROOM SUITE WITH BALCONY, STAINED GLASS WINDOWS, LARGE FAMILY ROOM, WET BAR AND ATTIC DOOR TO SIDE PORCH, LIVING ROOM WITH ATTIC DOOR TO PATIO, LOTS OF WINDOWS, FLOORS HAVE BEEN REFINISHED, VERY CHARMING HOME WITH ELITE AMENITIES!		



Currently On The Market 13213 Beaver Dam Rd

List Price: \$849,900	Lot Size: 1.89 Acres	Area: Ivy Hill
Yr Blt: 1984	Style: Classic	Elem Sch: Hunt Valley
Fin SqFt: 4030	Levels: 3	Middle Sch: Ridgely
Bedrooms: 4	Const: Cedar Siding	High Sch: Cockeysville
Bathrooms: 3 1/2	Const: Wood	Amenities: Wet Bar/Bar
Heating: Forced Air	Parking: Driveway	Amenities: Wood Floors
Fuel: Bottled Pro	Garage Spaces: 3	Other Rms: Family Room
Cooling: Central A/C	Basement: Unfinished	Other Rms: Wine Cellar
Water: Well	Remarks: HANDCRAFTED OAK, FLOOR AND STAIRCASE, THE ATTENTION TO ARCHITECTURAL DETAILS AND FINISHES SUCH AS HARDWOODS, MARBLE, CERAMIC AND BRASS ADD THE FINISHING TOUCHES!	



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FIGURE 5.1: CMA Material from ToolkitCMA™ (continued)

E.



Comparative Market Analysis

Summary

Currently On The Market

Address	Neighborhood	Style	Yr Blt	Beds	Bath	Sold Price	List Price
2 Symphony Cir	Laurelford	Modern	2008	4	3 1/1	\$789,000	\$789,000
12218 Cagham Road	Laurelford	Modern	1986	4	2 1/2	\$814,900	\$814,900
13213 Beaver Dam Rd	Ivy Hill	Classic	1984	4	3 1/2	\$849,900	\$849,900
84 Warren Rd	Hillside	Colonial	1994	5	4 1/1	\$885,000	\$885,000
20 Laurelford Ct	Laurelford	Colonial	1992	4	2 1/1	\$892,000	\$892,000
9 Julie Brentory	Shawen	Colonial	1995	4	3 1/1	\$898,900	\$898,900
510 West Padonia Rd	Springhill Farm	Modern	1991	5	4 1/1	\$899,500	\$899,500

Average of 7 Properties: \$861,314

Min: \$789,000

Max: \$899,500

Median: \$885,000

Under Contract

Address	Neighborhood	Style	Yr Blt	Beds	Bath	Sold Price	List Price
13707 Cuba Rd	Hillside	Cape Cod	1992	2	2 1/1	\$835,000	\$835,000
9 Ivy Reach Court	Ivy Reach	Colonial	2008	4	2 1/1	\$842,925	\$842,925
3 Indian Spring Court	Sherwood	Colonial	1995	6	4 1/1	\$850,000	\$850,000
15 David Luther Ct	Laurelford/Ivy	Colonial	1990	5	3 1/1	\$899,000	\$899,000
11 Forest Ct	Laurelford/Ivy	Colonial	1993	2	2 1/1	\$899,000	\$899,000

Average of 5 Properties: \$865,985

Min: \$839,000

Max: \$899,000

Median: \$850,000

Recently Sold

Address	Neighborhood	Style	Yr Blt	Beds	Bath	Sold Price	List Price
18 Chris Ellet Ct	Ivy Hill	Colonial	1989	3	3 1/1	\$725,000	\$849,000
12 Old Padonia Rd	Laurelford	Modern	2008	4	3 1/1	\$795,000	\$789,000
4 Chamael Ct	Ivy Hill	Colonial	1991	4	3 1/1	\$775,000	\$799,000
12002 Boxer Hill Rd	Sherwood	Colonial	1995	6	4 1/1	\$790,000	\$850,000
12993 Jerome Jay Dr	Laurelford/Ivy	Colonial	1990	5	3 1/1	\$830,000	\$899,000
24 Springhill Farm Ct	Springhill Farm	Cottage	2003	4	3 1/1	\$850,000	\$899,900
508 Shawan Rd	Hillside	Classic	2003	5	4 1/2	\$855,900	\$885,000
205 Warren Rd	Laurelford/Ivy	Colonial	1993	2	2 1/1	\$885,000	\$899,000

Average of 8 Properties: \$808,200

Min: \$725,000

Max: \$885,000

Median: \$810,000

Off The Market

Address	Neighborhood	Style	Yr Blt	Beds	Bath	Sold Price	List Price
10 Lowiton Cir	Hillside	Classic	1994	5	4 1/1	\$885,000	\$885,000
64 Boxwood Lane	Laurelford	Colonial	1992	4	2 1/1	\$892,000	\$892,000
9 Newcroft Ct	Shawen	Colonial	1995	4	3 1/1	\$898,900	\$898,900
23 Chilcoat Rd	Springhill Farm	Cottage	2003	4	3 1/1	\$899,900	\$899,900



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F.



Comparative Market Analysis

Graphed by Status

Currently On The Market



Under Contract



Recently Sold



Off The Market



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G.



Comparative Market Analysis

Statistics

Graphic Analysis of Currently On The Market Properties



Summary Statistics of 7 Properties:

Average Price: \$861,314

High Price: \$899,500

Low Price: \$789,000

Median Price: \$885,000

Average Year Built: 1992



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H.



Pricing Your Property to Sell

Pricing your property correctly is crucial. You want to sell your property in a timely manner at the highest price possible. Current market conditions determine the value.

Pricing too high or too low can cost you time and money. Realistic pricing will achieve a maximum sale price in a reasonable amount of time.

Analysis of the comparable properties suggests a list price range of:

\$783,954 to \$832,446



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ESTIMATED SELLER'S PROCEEDS

The **estimated seller's net proceeds** (Figure 5.2), what an owner actually receives in cash and/or paper from a sale, are of vital importance to owners. Seller proceeds would be the sales price less encumbrance and all sales expense charges and prorates. Owners who receive less than what they anticipated are going to be disappointed. They are going to be unhappy with you and your firm. When owners are unhappy, the chances that problems will arise during escrow tend to escalate. From the standpoints of good business, agency duty, and basic fairness, you want the owners to understand what they will net from a sale if sold at list price. The owners should know what costs they will incur.

The estimated seller's proceeds should show what the seller would net, based on a particular sale price.

While there are computer programs that will give you printouts of seller costs based on data you supply to the computer, the completeness of the form increases the likelihood that actual figures will vary only slightly from the estimate. Make sure that you will know the amounts the seller will likely incur. For example, all counties in California charge a documentary transfer tax, but some cities charge an additional tax. The seller should be made aware of these small but important charges. Many agents like to estimate seller costs just a little on the high side, so any surprises are more likely to be pleasant ones. You would prepare a new Estimated Seller's Proceeds form if the price were adjusted or if an offer were received at a price other than the one set forth in the listing.

THE LISTING PRESENTATION MANUAL


The listing presentation manual is a valuable visual tool for obtaining listings. It can be a paper presentation using a three-ring binder with plastic protector sheets for each page, but agents are more likely to use a laptop display. You want a visual tool that works hand in hand with your dialogue to make a structured and effective presentation. The listing presentation material sells the owner on benefits—the benefit of using an exclusive agent and the benefit of your firm as that agent. It should not be used in place of the verbal presentation. Basically, as the agent turns the pages or changes the images, the visual message reinforces the agent's verbal message. Separate listing presentation visuals should be prepared for sale listings and buyer listings, although some of the pages will be identical.

Using the laptop presentation forces the owners to sit close to you to view the monitor. While prospects are likely to get defensive if you invade their space, with a laptop presentation, they are the ones getting close to you. The advantage of physical proximity is that it is easier to gain trust and acceptance than it is from across a room.

Listing presentation manuals should be divided into two areas:

1. *Why* list?
2. *Why* us? (Your firm and you)

FIGURE 5.2: Good Faith Estimate of Seller's Net Sales Proceeds



GOOD FAITH ESTIMATE OF SELLER'S NET SALES PROCEEDS
 On Sale of Property

Prepared by: Agent _____
Broker _____

Phone _____
Email _____

NOTE: This net sheet is prepared to assist the Seller by providing an estimate of the amount of net sales proceeds the Seller is likely to receive on closing, based on the price set in the agreement, the estimated amount for expenses likely to be incurred to market the property and close a sale, and any adjustments and pro rates necessitated by the sale.

The figures estimated in the net sheet may vary at the time each is incurred due to periodic changes in charges for professional services, administration fees and work enforcement made necessary by later inspections, and thus constitute an opinion, not a guarantee by the preparer.

If the property disposed of is IRC §1031 property and the seller plans to acquire replacement property, use a §1031 Profit and Basis Recap Sheet to compute the tax consequences of the Seller's §1031 Reinvestment Plan. [See **ft** Form 354]

DATE: _____, 20____, at _____, California.

1. This is an estimate of the fix-up, marketing and transaction expenses Seller is likely to incur on a sale, and the likely amount of net sales proceeds Seller may anticipate receiving on the close of a sale under the following agreement:

☐ Seller's listing agreement
☐ Escrow instructions

☐ Purchase agreement
☐ Exchange agreement

☐ Counteroffer
☐ Option to buy

1.1 dated _____, 20____, at _____, California,
 1.2 entered into by _____, as the Seller, and
 1.3 _____, as the Buyer,
 1.4 regarding real estate referred to as _____.
 1.5 The day of the month anticipated for closing is _____.

2. **SALES PRICE:**
 2.1 Price Received. (+)\$ _____

3. **ENCUMBRANCES:**

3.1 First Trust Deed Note \$ _____
 3.2 Second Trust Deed Note \$ _____
 3.3 Other Liens/Bonds/UCC-1 \$ _____
 3.4 TOTAL ENCUMBRANCES: [Lines 3.1 to 3.3] (-)\$0.00

4. **SALES EXPENSES AND CHARGES:**

4.1 Fix-up Cost \$ _____
 4.2 Structural Pest Control Report \$ _____
 4.3 Structural Pest Control Clearance \$ _____
 4.4 Property/Home Inspection Report. \$ _____
 4.5 Elimination of Property Defects \$ _____
 4.6 Local Ordinance Compliance Report. \$ _____
 4.7 Compliance with Local Ordinances. \$ _____
 4.8 Natural Hazard Disclosure Report \$ _____
 4.9 Smoke Detector/Water Heater Safety Compliance \$ _____
 4.10 Homeowners' (HOA) Association Document Charge \$ _____
 4.11 Mello-Roos Assessment Statement Charge \$ _____
 4.12 Well Water Reports \$ _____
 4.13 Septic/Sewer Reports \$ _____
 4.14 Lead-Based Paint Report \$ _____
 4.15 Marketing Budget. \$ _____
 4.16 Home Warranty Insurance. \$ _____
 4.17 Buyer's Escrow Closing Costs \$ _____
 4.18 Loan Appraisal Fee \$ _____
 4.19 Buyer's Loan Charges. \$ _____
 4.20 Escrow Fee. \$ _____
 4.21 Document Preparation Fee \$ _____

FIGURE 5.2: Good Faith Estimate of Seller's Net Sales Proceeds (continued)

----- PAGE TWO OF TWO — FORM 310 -----

4.22	Notary Fees	\$	_____
4.23	Recording Fees/Documentary Transfer Tax	\$	_____
4.24	Title Insurance Premium	\$	_____
4.25	Beneficiary Statement/Demand	\$	_____
4.26	Prepayment Penalty (first)	\$	_____
4.27	Prepayment Penalty (second)	\$	_____
4.28	Reconveyance Fees	\$	_____
4.29	Brokerage Fees	\$	_____
4.30	Transaction Coordinator Fee	\$	_____
4.31	Attorney/Accountant Fees	\$	_____
4.32	Other _____	\$	_____
4.33	Other _____	\$	_____
4.34	TOTAL EXPENSES AND CHARGES [Lines 4.1 to 4.33]	(-) \$	0.00
5.	ESTIMATED NET EQUITY:	(=) \$	0.00
6.	PRO RATES DUE BUYER:		
6.1	Unpaid Taxes/Assessments	\$	_____
6.2	Interest Accrued and Unpaid	\$	_____
6.3	Unearned Rental Income	\$	_____
6.4	Tenant Security Deposits	\$	_____
6.5	TOTAL PRO RATES DUE BUYER [Lines 6.1 to 6.4]	(-) \$	0.00
7.	PRO RATES DUE SELLER:		
7.1	Prepaid Taxes/Assessments	\$	_____
7.2	Impound Account Balances	\$	_____
7.3	Prepaid Association Assessment	\$	_____
7.4	Prepaid Ground Lease	\$	_____
7.5	Unpaid Rent Assigned to Buyer	\$	_____
7.6	Other _____	\$	_____
7.7	TOTAL PRO RATES DUE SELLER [Lines 7.1 to 7.6]	(+) \$	0.00
8.	ESTIMATED PROCEEDS OF SALE:	(=) \$	0.00
8.1	The estimated net proceeds at line 8 from the sale or exchange analyzed in this net sheet will be received in the form of:		
a.	Cash	\$	_____
b.	Note secured by a Trust Deed.	\$	_____
c.	Equity in Replacement Real Estate.	\$	_____
d.	Other _____	\$	_____

I have prepared this estimate based on my knowledge and readily available data.

Date: _____, 20____

Broker: _____

DRE #: _____

Agent: _____

Signature: _____

I have read and received a copy of this estimate.

Date: _____, 20____

Seller's Name: _____

Signature: _____

Signature: _____

You must convince the owner or the buyer about the concept of a listing as your first step and then show that you should have the listing.

SALE LISTINGS

Owners feel that a listing will cost them money. They are likely to initially view the idea of a listing as negative rather than look at the benefits you can offer. Therefore, you must overcome the negative thoughts and help owners realize the benefits offered.

Why List?

When you deal with a **for sale by owner** (FSBO), realize that a significant reason the owners want to sell the home themselves is to save the commission. They feel if they can sell their property without an agent, the agent's fee will be additional money for them. Therefore, begin your presentation with a discussion of who actually saves when an agent is not involved.

Even when you are not dealing with an FSBO, you could be in competition with the owners, as well as with other agents, for a listing. While not stated or even denied, the owners could be considering selling without an agent as one of their options. Therefore, we believe that all listing presentation material should begin with a discussion of the false savings of FSBO offerings.

Consider starting your presentation with the following visual question and answer:

The primary reason owners want to sell without an agent is to avoid paying a commission.

Question:

Who saves when an owner sells without an agent?

Answer:

The buyer

Note: This question-and-answer technique is very effective and easy to prepare. Put only one question and answer on a page or screen. For a book, pages should be read on the right side of your book. We show suggested verbal presentations following each question and answer. You can use appropriate ideas to tailor your own presentation materials to your needs.

I understand why you would want to sell [might consider selling] your home without an agent. You would like to save the agent's fee. Owners who do succeed in selling without an agent—and there aren't that many of them—find that they're not the ones who save. If there are any savings to be had, the buyer enjoys them.

Buyers who approach owners who advertise their homes for sale or put signs in their front yards will want to reduce any offer they might make by at least the amount of the agent's fee, even though the price might have been set to reflect all or part of this savings.

Buyers will not even settle for half because they realize it is buyers, not sellers, who really pay the commission. The price the buyer pays includes a commission, and although the seller may pay it, it is paid for with dollars that come from the buyer's savings and not the seller's pockets. When an owner sells direct, losing the commission is just for starters. Buyers often view for-sale-by-owner situations as opportunities to make a profit for themselves. They believe that for sale by owner indicates a distress sale, and that belief explains some of the ridiculous offers that owners receive.

Question:

Why are most For Sale by Owner signs replaced by agent signs?

Answer:

Because owners are seldom successful in selling their homes, most owners who try to sell without an agent end up listing their property with a licensed agent. They wasted time and money on their futile effort.

Few buyers seek out For Sale by Owner ads and signs, and when they do give an offer it is usually at a price the owner will not consider. Many times, buyers who are considering making an offer on a for-sale-by-owner property will make an opening offer of at least 5% less than they would otherwise offer because they figure that the seller is not paying a commission. Many buyers use this as a negotiating tool.

Question:

Whom does this sign attract?

**Answer:**

Bargain hunters
“Lookie Lous”
Unqualified buyers

With a For Sale by Owner sign on your front lawn, you will attract bargain hunters of all types.

Your home will be on the Sunday entertainment tour of “Lookie Lous,” who might be interested only in how you have decorated your home or are simply using you as a way to fill an otherwise vacant day.

Your For Sale by Owner ads and signs will attract people who might truly love your home but don't have a prayer of getting necessary financing. These people

can waste a great deal of your time. Even if they give you an offer, the sale will never be closed.

A For Sale sign says “come on in” to the whole world. When you show people your home and belongings, you are really allowing strangers in. You let them see into closets and places that your best friend will never see, and you have no idea why they are there. While talking to one prospective buyer, another could be going through your jewelry box or medicine cabinet. I wish it weren’t a problem, but safety is a problem today. People put in expensive alarm systems and then invite strangers into their homes, allowing them to see who lives there and what is there. Is this wise?

Question:

What does this sign mean?



Answer:

Wasted time
Wasted effort
Likelihood of legal problems
Failure/discouragement

Owners who try to sell without an agent are prisoners in their own homes, waiting for a phone call on the ad or a passerby to ring their doorbell.

When they accept an offer, they might find that the other party views the agreement differently from what the owners thought was agreed to. The likelihood of a lawsuit is increased many times when an agent is not part of the transaction.

Actually, a lawsuit is seldom a problem, because most owners who try to sell without an agent never even get an offer.

Question:

Why do most serious buyers employ real estate agents?

Answer:

Because agents have the inventory, understand the market, know how to qualify buyers, and can negotiate a sale with all the paperwork.

[Mr. and Mrs.], when you were looking for a home to purchase, I bet you visited real estate agents, am I right? The reason you went to at least one agent is because agents knew what was on the market and were able to quickly locate properties that met your needs. Without agents, buyers would have to contact

dozens of individual property owners to check out properties, even though inspection might reveal that a property did not come close to meeting their needs. Buyers today are no different than you were when you purchased this home. Buyers who are serious about buying contact agents. Buyers dealing with agents understand they will have to pay a price dictated by the market and that they are not going to get anything for nothing.

We suggest you take a positive approach regarding the benefits of agency representation. Owners who understand the benefits of professional representation are less likely to resist paying a reasonable fee for these services.

Note: The word *fee* denotes a professional charge for benefits, whereas *commission* has a negative connotation to some people.

The word *commission* has a negative connotation, but *fee* is positive in that it is a charge for benefits received.

Question:

What do you get for your fee?

Answer:

These important benefits:
Help and advice on making your home more salable
Promotion and advertising (paid by the agent)
Exposure on seven websites
Multiple-listing benefits
Qualifying of all prospects
Freedom to enjoy your time
Advice on offers and counteroffers
Problem solving during escrow

We work with you to make your house salable at the highest possible price. We promote your home with advertising and open houses. We prepare advertising flyers on your home for other agents, for responses to inquiries, and for those visiting your home. We also feature your home on our own website, as well as seven other websites. Of course, we bear all of these costs.

Information on your home is made available through our multiple listing service to [137] offices and more than [1,814] agents and through the website that has [more than 3,000] hits per day. Is this the kind of exposure you want for your home?

An effective visual tool is to have a computer print-out listing every agent who is a member of your MLS service. The size of the printout helps impress upon the owners the number of people who will be able to work to sell their home.

We properly qualify anyone we bring to your home. We know who they are, where they live and work, and who can afford to buy your home before they cross your threshold.

You receive our advice on all offers received. We will work with you and the buyer in turning an unacceptable offer into an advantageous sale.

We work with buyers in obtaining financing to ensure that the purchase will close.

We monitor escrow to make certain there are no hang-ups. If a problem arises, we inform you and work to overcome it so the sale can progress.

The following question-and-answer approach is just one of many approaches that can be used for your listing presentation material. Whatever material you use should flow toward the desired goal of overcoming any resistance by the owners to signing an agency agreement. You must be comfortable with the approach you use. If you are not comfortable with the material, chances are your effort will reflect your attitude, which will translate into few successful listings.

WEB LINK

Figure 5.3 and Figure 5.4 were provided by Realty Tools, Inc. (www.realtytools.com) and show the benefits of listing and having agency representation.

Why Us?

To obtain a listing, you have to convince owners that you and your firm deserve their trust. This is particularly important when owners are hesitant about listing their property because of a previous unsatisfactory experience with another agent.

You must build rapport with property owners. The owners must not only want to list their property, they also must want to list with you because they feel you are a capable, truthful person representing a reputable firm.

Sell yourself to the owners as a caring person who understands their problems and wants to help produce solutions. If you are unsuccessful, you could end up doing all the groundwork for an easy listing by another agent who has been able to develop greater empathy with the owners.

Listen to what the owners say during and after your presentation. Address them by their last names (Mr. Owner, Mrs. Seller). Answer questions slowly and fully. Ask questions to determine if you are communicating fully with the owners.

Don't *tell* the owners, *ask* them. Don't talk down to them or dismiss questions with flippant remarks. Don't use technical terms or acronyms. They may not understand what this "girl" Fannie Mae has to do with their property. In the initial phase of the presentation, keep in mind that the product you are selling is really yourself.

You must sell yourself as worthy of an owner's trust.

The *Why Us?* portion of your listing material should cover you personally, as well as your firm. You might want to start with a one-page résumé titled "Want to Know About [Lester Jones]?"

Keep your résumé simple. You should have printed copies of this résumé so you can give the owners a copy. You are asking them to entrust you with the sale of their home, so they deserve to know something about you. When you give the owners your résumé, take no more than one minute to tell them about yourself. You should emphasize knowledge of the community, success in sales, special training, professional designations, and so forth.

FIGURE 5.3: Why Use a REALTOR®?

When selling your home, your REALTOR® can give you up-to-date information on what is happening in the marketplace including price, financing and terms of competing properties. These are key factors in a successful sale of your property at the best price in the least amount of time.

Only real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® are properly called REALTORS®. REALTORS® subscribe to a strict code of ethics and are expected to maintain a higher level of knowledge of the process of buying and selling real estate. They are committed to treat all parties to a transaction honestly. REALTOR® business practices are monitored at local board levels. Arbitration and disciplinary systems are in place to address complaints from the public or other board members.

Your REALTOR® can help you objectively evaluate every buyer's proposal and then help write an appropriate legally binding sale agreement. Between the initial sales agreement and settlement, questions may arise. For example, unexpected repairs may be required to obtain financing or a problem with the title is discovered. Your REALTOR® is the best person to help you resolve those issues and move the transaction to settlement.



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FIGURE 5.4: Services You Will Receive


Services You Will Receive

- We will help you determine the best selling price for your home.
- We will suggest what you can do to get your home in top selling condition.
- We will develop a strategy to show your home.
- We will enter your home in the Multiple Listing System.
- We will implement the enclosed marketing plan.
- We will talk with you to review progress periodically.
- We will advise you of changes in the market climate.
- We will present all offers to you promptly and assist in evaluating them.



- We will monitor progress toward closing when a contract is accepted.
- We will monitor the appraisal and buyers loan approval.
- We will immediately advise you of events that may threaten closing.
- We will coordinate and monitor the settlement process.



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You should ask every buyer and seller for a letter detailing how they feel about your firm at the closing of a transaction. The letters should be placed in a file to be produced during a listing presentation. It has a greater effect than a résumé.

A photo of your office or, if more than one office, a collage of photos can be effective. If your office has been in business a long time, a caption such as “Servicing [Midvale] since [1953]” is appropriate. If you are with a large firm or franchise, the caption could read “[8] offices and [146] professionals ready to serve you.” If you have a large office, a group photo of your sales force with the name of your firm is effective.

Your narrative could simply be the following:

We offer the advantage of 8 offices and 146 salespeople. Isn’t this the kind of sales force you want for success?

For a franchise, consider this presentation:

[Franchise Name] [Logo]
[1,823] Offices
[36,000] Salespeople
Our Name Means: Instant Recognition
National Referrals

Your possible narrative could be this:

The name [VIP Realty] means instant recognition even to those who are new to our community. Because we are a [VIP] office, you can benefit from our national referral system.

If your firm is small, use a photo of your office and turn your small size into a positive with a narrative such as the following:

Because we specialize in a small number of select properties, our owners receive maximum service. Your home will not be competing with 400 other office listings. We can provide the individual attention your home deserves in order to have a successful sale.

As an alternative, you might use a caption to illustrate your small firm as part of a large organization:

[Loring Realty] is part of a multiple listing service offering you [237] offices and more than [2,000] salespeople, all working for your success.

Your narrative might be as follows:

With [Loring Realty] representing you, you can take advantage of this huge sales force working together for your success.

Perhaps you want a separate sheet providing information on your multiple listing service. Your possible narrative might be this:

By appointing [Loring Realty] as your agent, [in less than one hour] the information on your home will be available to these [237] offices and more than [2,000] salespeople. This sales force can be working for you.

An alternative narrative for a multiple listing service would be the following:

Assume every agent in our multiple listing service is working with just two buyers for a home in your home's general price range. Now that may seem to be a very low figure, but consider that tomorrow morning your home can be exposed to those two buyers by [2,000] agents. That's [4,000] potential buyers for your home.

If you are a REALTOR®, consider a sheet with just the REALTOR® trademark. Your narrative could be this one:

Every broker is not a REALTOR®. Only REALTORS® can use this symbol. [Loring Realty] is a member of the California Association of REALTORS® and the National Association of REALTORS®. As REALTORS® we are pledged to a Code of Professional Conduct.

If your firm is a member of the National Association of Real Estate Brokers, a similar approach could be used.

A collage of press releases can be effective as follows:

The fact that [Loring Realty] has played a dominant role in [community activities] and [development] brings us instant name recognition as a professional leader.

Tell owners how your firm advertises to attract potential buyers. For a larger firm, you could have a sheet stating this:

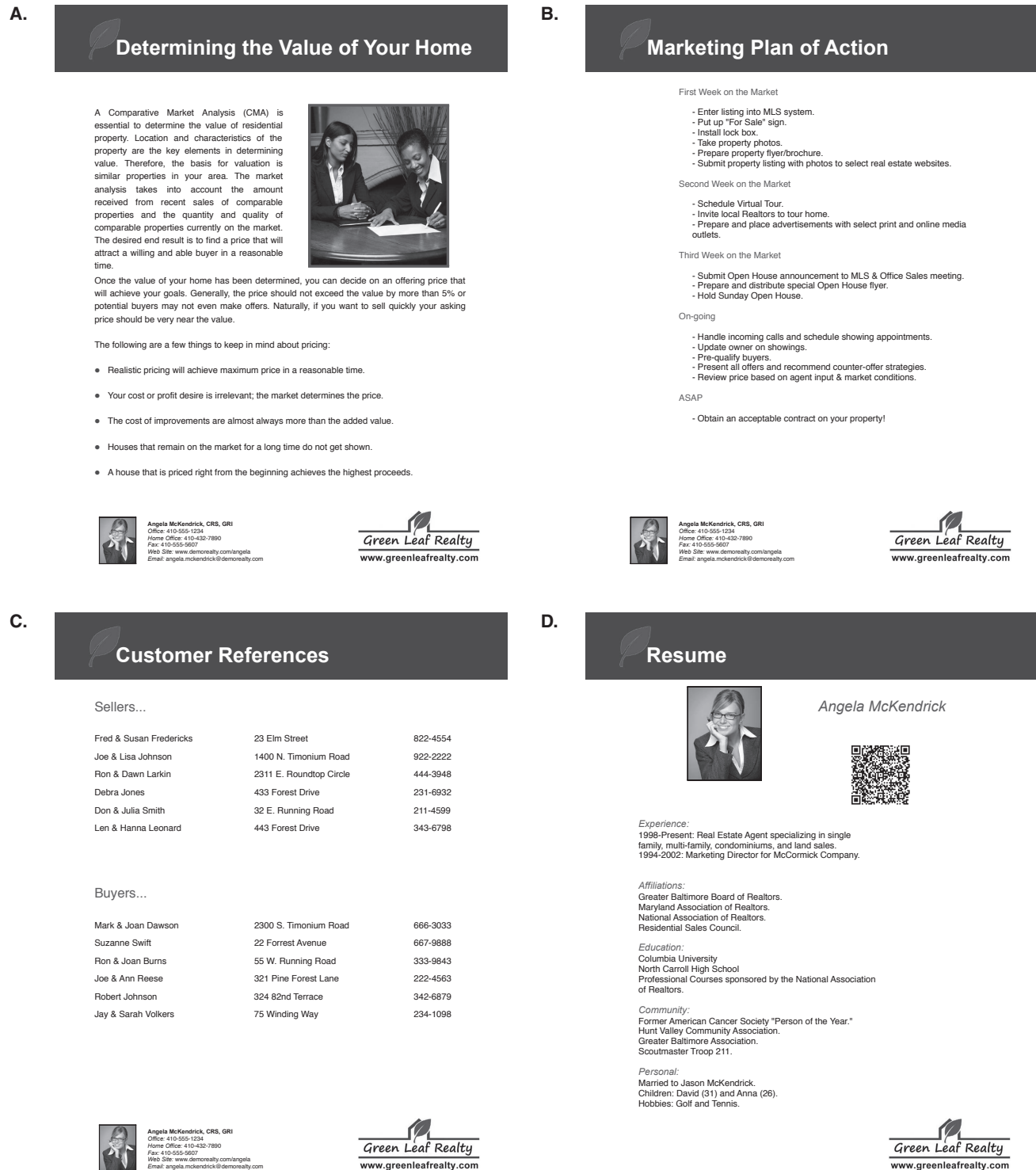
2022

[\$2 Million] + Advertising Budget

Your narrative could be this one:

Our advertising budget of [\$] means [\$] per week spent to bring in buyers. This budget has given us name recognition and dominance in the marketplace. Our dominance is reflected in our sales record.


FIGURE 5.5: Presentation Samples



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FIGURE 5.5: Presentation Samples (continued)

E.







In Conclusion

**When you choose Angela McKendrick
you will receive:**


- Excellent service and support.
- A market analysis of your home.
- A winning marketing plan.
- Every effort to sell your home promptly.
- The resources of Green Leaf Realty.

**List Your Home Now
with Angela McKendrick!**



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www.greenleafrealty.com

For a small firm, consider a collage of your ads, web listings, or both. You could say: You can see we publicize our listings.

If your office advertises in a foreign paper places listings on foreign websites or has relationships with brokerage offices in other countries, this should be emphasized. Many owners feel that foreign buyers pay top price, so that access to them is important.

The Only Office in [Sacramento] Advertising in


Nihon Keizai Shimbun

Japan's Largest Business Daily Newspaper

We market our properties to the largest possible market. We go to the buyers. Besides our area advertising, our international advertising has built up a referral network of agents who work with us to locate buyers.

FIGURE 5.6: Presentation Samples**A.**

Real Estate Services Proposal




Prepared Especially for:
Tom & Mary White
7 Deep Run Court
Hunt Valley, MD 21030

For marketing the property located at:
7 Deep Run Court



Prepared by:
Angela McKendrick, CRS, GRI
Agent
Green Leaf Realty
123 Main Street
Hunt Valley, MD 21030

Office: 410-555-1234
Home Office: 410-432-7890
Fax: 410-555-5607
Web Site: www.demorealty.com/angela
Email: angela.mckendrick@demorealty.com

Date: August 20, 2015




This analysis is not an appraisal. It is intended only for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property.

B.


Subject Property Profile for

7 Deep Run Court




The following features have been identified to aid in the search for properties that are comparable to yours. This will help in determining proper pricing for your home.

<p>City: Hunt Valley Fin Sqft: 2100 Style: Colonial Bathrooms: 2/1 Basement: Fully Finished Fuel: Electric Garage Spaces: 2 Sewer: Septic Amenities: Built-In Bookcases Other Rms: Family Room</p>	<p>Neighborhood: Orchard Valley Lot Desc: Backs To Trees Levels: 3 Const: Cedar Siding Basement: Walkout Level Cool: Central A/C Exter Feat: Deck # Fireplaces: 2 Amenities: Mba/Sep Shwr</p>	<p>Year Built: 1988 Lot Size: 1.04 Bedrooms: 3 Roofing: Cedar/Shake Heat: Heat Pump Parking: Garage Water: Well Amenities: Auto Gar Dr Opn Other Rms: Den/Study/Lib</p>
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C.

Marketing Plan of Action

First Week on the Market

- Enter listing into MLS system.
- Put up "For Sale" sign.
- Install lock box.
- Take property photos.
- Prepare property flyer/brochure.
- Submit property listing with photos to select real estate websites.

Second Week on the Market

- Schedule Virtual Tour.
- Invite local Realtors to tour home.
- Prepare and place advertisements with select print and online media outlets.

Third Week on the Market


- Submit Open House announcement to MLS & Office Sales meeting.
- Prepare and distribute special Open House flyer.
- Hold Sunday Open House.

On-going


- Handle incoming calls and schedule showing appointments.
- Update owner on showings.
- Pre-qualify buyers.
- Present all offers and recommend counter-offer strategies.
- Review price based on agent input & market conditions.

ASAP

- Obtain an acceptable contract on your property!



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D.

Currently On The Market

2 Symphony Cir

List Price: \$789,000






Property Details

City: Cockeysville
Neighborhood: Laurelford
Year Built: 2008
Fin Sqft: 5484
Lot Desc: Backs To Trees
Lot Size: 1.14 Acres
Style: Modern
Levels: 3
Bedrooms: 4
Bathrooms: 3/1
Const: Cedar Siding
Roofing: Cedar/Shake
Basement: Finished
Basement: Walkout Level
Heat: Heat Pump
Fuel: Electric
Cool: Central Air
Parking: 2-Car Garage
Garage Spaces: 2
Exter Feat: Deck
Water: Well


Description

Gorgeous home available for move in immediately! Inground Pool in back of house. Fabulous Master Bedroom, Spacious Rooms."



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FIGURE 5.6: Presentation Samples (continued)

E.

Resume



Angela McKendrick



Experience:
1998-Present: Real Estate Agent specializing in single family, multi-family, condominiums, and land sales.
1994-2002: Marketing Director for McCormick Company.

Affiliations:
Greater Baltimore Board of Realtors.
Maryland Association of Realtors.
National Association of Realtors.
Residential Sales Council.

Education:
Columbia University
North Carroll High School
Professional Courses sponsored by the National Association of Realtors.

Community:
Former American Cancer Society "Person of the Year."
Hunt Valley Community Association.
Greater Baltimore Association.
Scoutmaster Troop 211.

Personal:
Married to Jason McKendrick.
Children: David (31) and Anna (26).
Hobbies: Golf and Tennis.



F.

Customer References

Sellers...

Fred & Susan Fredericks	23 Elm Street	822-4554
Joe & Lisa Johnson	1400 N. Timonium Road	922-2222
Ron & Dawn Larkin	2311 E. Roundtop Circle	444-3948
Debra Jones	433 Forest Drive	231-6932
Don & Julia Smith	32 E. Running Road	211-4599
Len & Hanna Leonard	443 Forest Drive	343-6798

Buyers...

Mark & Joan Dawson	2300 S. Timonium Road	666-3033
Suzanne Swift	22 Forrest Avenue	667-9888
Ron & Joan Burns	55 W. Running Road	333-9843
Joe & Ann Reese	321 Pine Forest Lane	222-4563
Robert Johnson	324 82nd Terrace	342-6879
Jay & Sarah Volkers	75 Winding Way	234-1098



G.

In Conclusion

When you choose Angela McKendrick you will receive:

- Excellent service and support.
- A market analysis of your home.
- A winning marketing plan.
- Every effort to sell your home promptly.
- The resources of Green Leaf Realty.

List Your Home Now with Angela McKendrick!







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If your office has a home protection plan, consider this:

*[Loring Realty] Offers Buyers
Home Protection Plan
That Makes Your Home More Desirable to Buyers*

Our home protection plan protects buyers against structural problems and system breakdowns for [one] year after purchase. This protection has given us a word-of-mouth reputation to the extent that many buyers would not consider using another agent to purchase a home.

If your office belongs to a national referral network but is not a franchise office, consider a sheet or computer screen that reads as follows:

*Member
[Home Relocators]
A National Relocation Referral Service
[1,838] Cooperating Member Firms in 50 States*

Your possible narrative might be as follows:

Would you like to take advantage of referrals from every corner of the nation? We constantly receive calls about people relocating to our area because of our [Home Relocators] membership. We want our owners to have every sales advantage possible. I'm sure that's the kind of representation you want.

Emphasize your internet site:

I'm sure you realize that the internet is of prime importance in selling real estate. These are a few pictures of our internet site.

Show a home presentation from the site, as well as your office home site. If your site features virtual tours, explain what they are and the benefits they offer (with a high-speed wireless connection, you can access the sites on your laptop for a very effective presentation):

[Loring Realty] takes second place to no one in using technology to market our homes.

Emphasize your internet presence:

"We will be placing your home (photos, video, virtual tour) on nine websites visited by [over 85,000] viewers each day."

If you purchase enhanced coverage on websites, you should point out how their property will stand out from other listings. If your firm specializes in the area where you are seeking a listing, a sheet should show this specialization:

*[Palm Desert Greens]
Housing Specialists*

Your narrative could be something like this:

We specialize in [Palm Desert Greens]. We have built up a reputation of being the [Palm Desert Greens] broker. Prospective buyers come to us because we have the inventory and make the sales. When other agents get a buyer who is interested in [Palm Desert Greens], they frequently call us. Our cooperation with others and our knowledge of the market have resulted in a record of success in [Palm Desert Greens] that we are proud of.

By using computer information from your local multiple listing service, you should be able to find statistics that show your firm is outstanding in several areas. Sheets should be prepared to showcase these distinctions. But be careful when you use statistics. If you emphasize that 50% of your listings are sold, it also points out a 50% failure rate. Approaches that are more positive would be these:

*[Loring Realty]
[42%] Better Record of Success*

According to the records of the [Tri-County Multiple Listing Service], listings with [Loring Realty] had a [42%] greater chance of success than the board average for [2021].

*[Loring Realty]
We Get More for Your Home*

According to the records of the [Tri-County Multiple Listing Service], the average home in [2021] sold at [84%] of its listed price. In [2021], [Loring Realty] home sales averaged [94%] of list price. That's [10%] more money in the pockets of our sellers than our competition. Is getting the most money from your home important to you?

Another approach could be this:

For all practical purposes, you get our services free. Let me tell you why. The average sale as reported by the [Tri-County Multiple Listing Service] for [2021] was at [84%] of list price. In [2021], [Loring Realty] sales averaged [94%] of list price. Therefore, we were able to get our owners an increase over the average sale in excess of our fees received.

The percentage of your own listings that are sold by your office can be a positive statement about your firm:

*[2021] Multiple Listing Figures
Sales Made by Listing Office
Average [26%]
[Loring Realty] [51%]*

At [Loring Realty] we don't just list and hope one of the cooperating offices finds a buyer. From these figures, you can see that we feel obligated to work hard for our owners. When we represent you, you come first.

Would you like to know how we will sell your home?

You should have a visual marketing plan (see Figure 5.5E).

Your plan should indicate the following as applicable:

Signs, talking signs

Property flyers

MLS distribution

Office website

Other websites used (domestic and foreign)

Enhanced websites

Social media

Electronic lockboxes

Virtual tours

Agent caravan

Open houses

Papers, magazines, and other print media

Owner suggestions

Staging

Owner communications

Communications with other agents

Constant evaluation of efforts, property, and results

The last page or screen of your presentation should really be a trial closing:

[Mr. and Mrs. Garczynski], don't you want [Loring Realty] to represent you?

Your narrative would simply be the question asked.

Additional Listing Tools

Another tool to bring to a listing presentation is a completed property flyer of the owner's home with a good color photograph of the home and known information (other information left blank, as well as price). This should be left with the owner even if the listing is not obtained.

If you use talking signs, a rider strip showing the radio frequency, the base unit, and a radio to listen to a prepared voice message could put you a step above much of the competition.

Bring an electronic lockbox the owners can handle. People like to feel things. It is in our human nature. Let owners hold the lockbox while you explain the security aspects and the information it provides.

BUYER LISTINGS

To obtain listings from buyers, you should explain the normal agency where the agent represents the seller or has dual agency duties. An understanding of seller agency will make the need for buyer agency representation very apparent.

Owners must also understand what you will do for them and how you will be paid your fee. You can use a variation of the question-and-answer technique with just questions where the answers are obvious:

Whom does the property listing agent represent?

Will the property listing agent try to find the home that is best for you, or will the agent try to sell his clients' property?

Some lenders selling foreclosed properties pay brokers a selling fee less than is usually charged. Will a seller's agent want to show you these homes when they have listings that offer them higher fees?

Will the property listing agent try to sell you the property at the lowest possible price?

The sellers have an agent looking out for their best interests. Should you be similarly protected?

You should explain that your services will generally be paid for by the seller because you will accept the multiple listing service commission split as compensation, which is paid by the seller.

For your presentation, consider the similar material developed by Realty Tools, Inc., or by other software suppliers. In addition, some of the same material you developed for sales listings would be applicable to buyer listings.

Note: Buyer presentation material can also be used as an enclosure when responding to an inquiry, as well as presented to prospective buyers where a buyer listing is not being sought.

COMMERCIAL AND INVESTMENT PROPERTY

WEB LINK



While you can modify residential listing presentations for commercial and investment property, a better approach would be to use software designed for the purpose. Some examples of providers of such software are www.realdatal.com, www.costargroup.com, and www.realhound.com.

SUMMARY

The comparative market analysis is an excellent tool for arriving at a recommended list price, as well as for convincing owners that it is in their best interests to initially list their home at a realistic price. The attachments you provide clearly illustrate the effect of pricing on the time to sell, as well as on the likelihood of success.

The Estimated Seller's Proceeds form is really a disclosure form to fully inform the owners of what they will net from a sale at list price. By receiving this information at the time of listing, the owners are prepared for what they will actually receive. Unpleasant surprises can mean sales that fail to close.

The listing presentation manual is a paper or computer visual tool to be used along with the agent's narrative to provide a structured, effective listing presentation.

The presentation manual is broken down into two sections. One is *Why List?* and the other is *Why Us?* The *Why List?* presentation shows owners why it is in their best interests to employ an exclusive selling agent. The *Why Us?* presentation tells the owners about you and your firm. It shows the owners the advantages your firm offers. It is a positive approach because it sells benefits and leads to a trial closing.

A separate listing presentation manual should be prepared for buyer listings.

CLASS DISCUSSION TOPICS

1. Comparative market analysis

Prepare a comparative market analysis on a property (use real or fictitious comparables). Present the analysis to an owner (use another student) and explain how you arrived at your recommendations.

2. Estimated Seller's Proceeds form

Prepare an Estimated Seller's Proceeds form, based on costs in your area, for a home that has a \$181,000 first trust deed. The seller will be paying 6% commission on the \$300,000 sale. (Do not prorate taxes, insurance, or consider impound accounts.)

3. Listing presentation manual

Prepare either the *Why List?* or *Why Us?* portion of a listing presentation manual. Be prepared to make a presentation in class on your portion of the listing presentation manual to another student as though you were addressing an owner.

4. A prospective seller will be interviewing other agents.

Prepare, in writing, the reasons the prospective seller should choose you or your firm rather than your competitors.

5. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. A CMA is *BEST* described as
 - a. a formal appraisal.
 - b. the cooperative marketing approach of multiple listings.
 - c. a reflection of the reality of the marketplace.
 - d. the comparative mortgage analysis performed by agents in advising buyers as to lender and loan type.
2. In making your recommendation of list price for a single-family home, the *MOST* important portion of the analysis deals with
 - a. list prices of homes on the market now.
 - b. list prices of homes where the listings expired.
 - c. prices of comparable properties that sold.
 - d. possible rental income.
3. You should realize that for data used on a CMA,
 - a. the older the data, the less reliable they are.
 - b. sales prices that seem unusually high or low are often the result of market imperfections.
 - c. both of these are true.
 - d. both of these are false.
4. Owners must be made to realize that
 - a. the higher they price their home over fair market value, the longer it will take to sell.
 - b. the higher they price their home over fair market value, the lower the likelihood of a sale during the listing period.
 - c. both of these are true.
 - d. both of these are false.
5. A recommended list price below what the CMA indicates as the likely sale range is in an owner's best interest when
 - a. a sellers' market exists.
 - b. the seller must get the highest net.
 - c. the seller must sell quickly.
 - d. the seller is not strongly motivated to sell.
6. What a seller receives in hand from a sale is the
 - a. gross sale price.
 - b. net sale price.
 - c. net profit.
 - d. seller's net proceeds.
7. The principal reason owners try to sell their homes without an agent is
 - a. to have a quick sale.
 - b. to save the commission.
 - c. to be able to pick the buyer.
 - d. none of these.

8. Your listing presentation material should
 - a. be organized to follow your listing presentation.
 - b. not be used in lieu of a verbal presentation.
 - c. be helpful in selling an owner on the concept of listing in general and listing with your firm in particular.
 - d. be all of these.
9. Which statement is the *BEST* approach to take when selling the benefits of listing with a small office?
 - a. “We try harder because of the competition.”
 - b. “All we need to find is one buyer, and even we can do that.”
 - c. “We need the business more than the large firms do.”
 - d. “We specialize in a small number of select properties.”
10. Which would be the *MOST* effective statement to make during a listing presentation?
 - a. Last year we sold 26% of the listings we took during the listing period.
 - b. Our office has six full-time and nine part-time salespeople.
 - c. Last year our average sale was at 86% of the list price.
 - d. Our average time to sell was 32 days last year compared with a MLS average time to sell of 54 days.

6

UNIT SIX



LISTING PRESENTATIONS AND LISTING CONTRACTS

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- define listing agreement;
- describe all clauses in the exclusive-authorization-and-right-to-sell listing and the exclusive-right-to-represent agreement (buyer's listing); and
- describe the listing transaction.

KEY TERMS

bilateral agreement	net listing	trial closing
exclusive-agency listing	open listing	Uniform Electronic
exclusive-authorization-and-right-to-sell listing	option combined with a listing	Transaction Act
exclusive-right-to-represent agreement	procuring cause	unilateral contract
	safety clause	
	short sale	

THE LISTING AGREEMENT

Of all the documents used in the real estate business, none is more important than the listing agreement. This is the instrument that defines a broker's rights and duties. It is the broker's employment contract and gives the broker the right to compensation.

Definition

A *listing agreement*, when executed (signed) by the parties, becomes a legally binding *contract* that authorizes a broker to serve as agent for a principal in a real estate activity. Listing contracts may be entered into for the purpose of securing qualified persons to buy, sell, lease, or rent property or to locate property for lease or purchase. Agents are authorized to find a purchaser or a lessee for a particular property at a specified price and terms, within a certain time limit, or to locate a property for a prospective buyer or a lessee, commonly known as a *buyer agency listing*. The agreement spells out the rights to and obligations of the broker and the seller or the broker and the buyer.

The agreement creates an agency relationship. Brokers who fulfill their part of such contracts are entitled, both legally and morally, to be paid for these efforts. Just a few years ago, buyer agency listings were practically unknown. Now they are common because they make sense to buyers who want an agent who represents their interests.

Elements

Because the listing is a contract, it must include all the essential elements of a contract, including competency of parties, lawful object, proper offer and acceptance (mutual consent), and consideration.

California has adopted a modified version of the Uniform Electronic Transaction Act. Parties can agree to conduct a transaction by electronic means. This could apply to listing agreements. A number of electronic signature software programs are available.

To be enforceable, listing contracts must be in writing [Civil Code 1624(5)]. Oral listings provide the broker with no legal protection whatsoever, because without a written contract, the broker cannot enforce payment of compensation if the principal refuses to pay it. "My word is my bond" is no bond at all in a court of law.

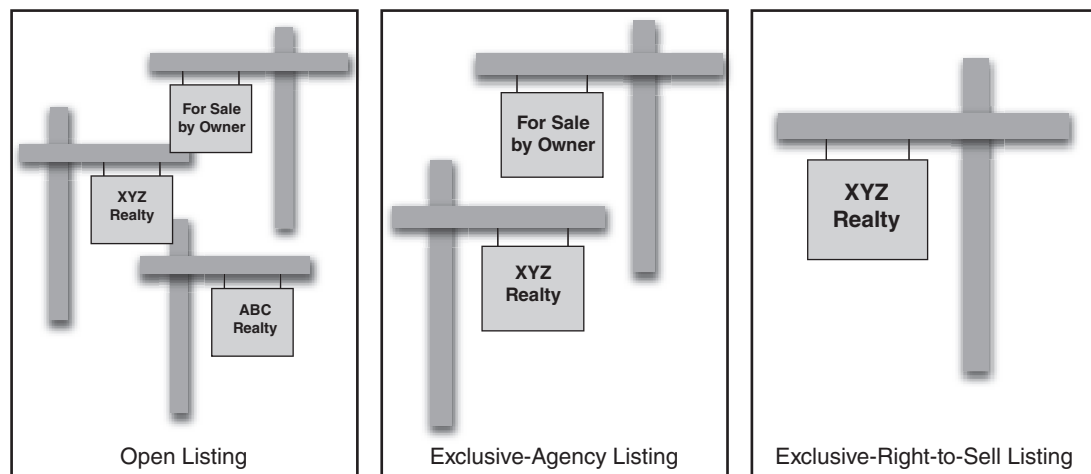
The *consideration* in a listing contract is the broker's promise to "use diligence in locating a ready, willing, and able buyer" in exchange for the seller's promise to pay a commission or the agent's promise to locate a property for a buyer with compensation paid by the buyer or the seller. The promise (seller or buyer to pay commission) given for a promise (broker to use diligence in finding a buyer/property) is a **bilateral agreement**, which is a promise made in exchange for another promise.

The consideration that passes between parties in a real estate contract can be anything of value.

Types of Listing Agreements

There are many variations of the basic listing agreement from various publishers, as well as computer program forms and special forms used by real estate franchises. Some are for general residential property; others are for special types of property, such as industrial, income, farm, or unimproved property. Despite the variations, there are three basic kinds of listings: open listings, exclusive-authorization-and-right-to-sell listings, and exclusive-agency listings. Net listings and option listings are additions to the three aforementioned listing contracts. A buyer's listing can be an open or exclusive listing. The purpose of a listing agreement generally is to define the relationship between the seller (or buyer, in the case of a buyer's listing) and the broker. You may find it useful to group listings into two kinds of agreements, exclusive and nonexclusive. Figure 6.1 classifies listings according to the relationship between seller and broker.

FIGURE 6.1: Who May Sell a Property and Receive a Commission under Three Types of Listing Agreements



Open listing. An **open listing** is a nonexclusive written memorandum that when signed by the seller or buyer, authorizes the broker to serve as an agent for the sale or purchase of property. Under an open listing, the principal agrees to pay a commission if the broker procures a buyer or property that is purchased. Because the broker is not obligated to use diligence to locate a buyer or property, an open listing is considered to be a **unilateral contract**. It is a promise that is accepted by the agent's action in procuring a buyer or a property.

The seller or buyer may give this type of listing to as many brokers as he or she sees fit. If the owner has given agents permission to erect signs, there could be multiple For Sale signs on a property. The first agent who finds, according to the listing terms, a ready, willing, and able buyer, or a buyer at any terms acceptable to the seller; or an acceptable property for the buyer gets the commission. This

cancels all other open listings and negates the payment of any other commission. An open listing allows the owner to sell the property herself or the buyer to buy the property himself without being liable to the broker(s) for any compensation.

From the seller's or the buyer's point of view, open listings may appear to provide a wider market than exclusive agreements. However, more sophisticated sellers and buyers often conclude that brokers receiving this type of listing are unlikely to give them preferred attention. Sellers and buyers soon discover that "what is everybody's business is nobody's business" and that carefully selecting a single competent broker is almost always to their advantage.

Most real estate offices will not take an open sale listing because they know that the likelihood of a sale is slight and that allowing the owner to feel the office is using diligence could be a disservice to the owner. With an open listing, there can be owner/agent competition for the same buyer. Owners will often try to make the sale themselves to avoid paying a commission. In order to be protected as the "procuring cause" of a sale, the broker must register a buyer with the owner. The agent who is the procuring cause must have initiated an uninterrupted series of events that led to the sale. Experienced agents will hold out for an exclusive-right-to-sell listing and, if they are unable to obtain one, will walk away. The fact that others might agree to an open listing can actually help them. After the owner and the open listing agents have tried unsuccessfully to market the property for several months, the owner should be more receptive to a prepared marketing plan under an exclusive-right-to-sell listing.

An exclusive-authorization-and-right-to-sell listing entitles the listing agent to the compensation, no matter who sells the property.

Exclusive-authorization-and-right-to-sell listing. An **exclusive-authorization-and-right-to-sell listing** gives a broker the sole right to procure a purchaser for a property. With this type of listing, the broker is the sole agent and has the right to a commission if a buyer is found for the property by anyone—even the owner—during the term of the listing. The listing broker has earned a commission when a bona fide offer from a ready, willing, and able buyer at a specified or accepted price and terms is produced, whether or not escrow closes. (The listing is to produce a buyer.)

All exclusive listings, by law, must have a definite termination date. Listings should be dated when they are taken, and the effective term should be set forth so clearly and definitely that there can be no mistake. An exclusive listing may not contain such wording as "effective until date of sale" or "until canceled in writing." California Real Estate Law Section 10176(f) states that a licensee is subject to disciplinary action for

claiming, demanding, or receiving a fee, compensation, or commission under any *exclusive* agreement authorizing or employing a licensee to sell, buy, or exchange real estate for compensation or commission where such agreement does not contain a *definite, specified date* of final and complete termination. [emphasis added]

The agent must give the owner a copy of any exclusive listing at the time it is signed. Because open listings are frequently just letters from an owner and need

not be signed by the agent, an agent is not required to give the owner copies of these open listings, although it is strongly recommended that the owner receive copies of all listings. Figure 6.2 is an exclusive-authorization-and-right-to-sell listing form.

With an exclusive-agency listing, the broker is not entitled to a commission if the owner sells without an agent's assistance.

Exclusive-agency listing. An **exclusive-agency listing** differs from the exclusive-authorization-and-right-to-sell listing in one major respect: while the seller will pay a commission to the listing broker regardless of which agency makes the sale, it does not prevent owners from selling their own property and paying no commission. This places the owner in competition with the agent. Because the seller reserves the right to sell without an agent, this listing is often referred to as a “seller reserved” listing.

Owners will often want an exclusive-agency listing because they have one or more parties who have expressed interest in the property and don't want to have to pay a fee for the agent selling to “their” prospect. In order to avoid competition with the owner, the agent should suggest an exclusive authorization-and-right-to-sell listing with exceptions for named parties for a period of time, such as seven days. If the buyer's prospects are seriously interested, they will have to decide quickly or they will realize that the owner will be paying a fee, which reduces any advantage they may feel they have in buying direct from the owner. Such an agreement helps the owner because it could mean a quick sale or saving wasted time with a party who is not a serious buyer. After the stated time, which in this case was seven days, the broker has an exclusive-authorization-and-right-to-sell listing without exceptions. The broker might also gain prospects for the purchase of other properties.

It is important to keep in mind that whenever there is an excluded party from an exclusive-right-to-sell listing, the listing agent should disclose the exclusion to other agents. Failure to do so could make the listing agent responsible for paying a commission to another agent, even though the listing agent did not receive compensation for the transaction.

Net listings provide that the commission shall be the excess over a net price set by the seller.

Net listing. A **net listing** is not truly a type of listing. Net listings could be open, exclusive-right-to-sell, or exclusive-agency listings. Net refers to commission. A clause in the agreement states that the owner is asking a certain sum of money from the sale of property. All expenses, including the broker's commission, are to be covered by any sum the broker is able to obtain in excess of the selling price (net) specified by the seller.

Net listings are seldom used. They make agents vulnerable to charges of fraud, misrepresentation, and other abuses against which the real estate law offers sellers protection. For example, a broker might fail to tell an owner that the price the owner wants is too low or be tempted to persuade the seller to ask for the lowest possible amount so that the broker can sell the property at a much higher price to collect a large commission. These types of actions go against the broker's duties as an agent. In fact, net listings are illegal in a number of states because of the inherent conflicts of interest. Even though they are legal in California, they are generally avoided.

FIGURE 6.2: Residential Listing Agreement (Exclusive Authorization and Right to Sell)

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RESIDENTIAL LISTING AGREEMENT
(Exclusive Authorization and Right to Sell)
 (C.A.R. Form RLA, Revised 6/21)

Date Prepared: _____

- 1. EXCLUSIVE RIGHT TO SELL:** _____ ("Seller")
 hereby employs and grants _____ ("Broker")
 beginning (date) _____ and ending at 11:59 P.M. on (date) _____ ("Listing Period")
 the exclusive and irrevocable right to sell or exchange the real property described as _____

_____, situated in _____ (City),
 _____ (County), California, _____ (Zip Code), Assessor's Parcel No. _____ ("Property").

☐ This Property is a manufactured (mobile) home. See Manufactured Home Listing Addendum (C.A.R. form MHLA) for additional terms.

☐ This Property is being sold as part of a probate, conservatorship, guardianship, or receivership. See for Probate Listing Addendum and Advisory (C.A.R. Form PLA) additional terms.

2. LISTING PRICE AND TERMS:

A. The listing price shall be: _____ Dollars (\$ _____).

B. Listing Terms: _____

3. COMPENSATION TO BROKER:

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).

A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either ☐ _____ percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or ☐ \$ _____, AND _____, as follows:

- (1) If during the Listing Period, or any extension, Broker, cooperating broker, Seller or any other person procures a ready, willing, and able buyer(s) whose offer to purchase the Property on any price and terms is accepted by Seller, provided the Buyer completes the transaction or is prevented from doing so by Seller. (Broker is entitled to compensation whether any escrow resulting from such offer closes during or after the expiration of the Listing Period, or any extension.)

OR (2) If within _____ calendar days (a) after the end of the Listing Period or any extension; or (b) after any cancellation of this Agreement, unless otherwise agreed, Seller enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone ("Prospective Buyer") or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker, or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property. Seller, however, shall have no obligation to Broker under paragraph 3A(2) unless, not later than the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.

OR (3) If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.

B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation which otherwise would have been earned under paragraph 3A shall be payable only if and when Seller collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.

C. In addition, Seller agrees to pay Broker: _____

D. Seller has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.

(1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of Broker's compensation specified in 3A, either ☐ _____ percent of the purchase price, or ☐ \$ _____.

(2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS as per Broker's policy.

E. Seller hereby irrevocably assigns to Broker the above compensation from Seller's funds and proceeds in escrow. Broker may submit this Agreement, as instructions to compensate Broker pursuant to paragraph 3A, to any escrow regarding the Property involving Seller and a buyer, Prospective Buyer or other transferee.

F. (1) Seller represents that Seller has not previously entered into a listing agreement with another broker regarding the Property, unless specified as follows: _____

(2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property unless the Property is transferred to any of the following individuals or entities: _____

(3) If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (i) Broker is not entitled to compensation under this Agreement; and (ii) Broker is not obligated to represent Seller in such transaction.

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Seller's Initials _____ / _____



RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 1 OF 5)

FIGURE 6.2: Residential Listing Agreement (Exclusive Authorization and Right to Sell) (continued)

Property Address: _____ Date: _____

4. **A. ITEMS EXCLUDED AND INCLUDED:** Unless otherwise specified in a real estate purchase agreement, all fixtures and fittings that are attached to the Property are included, and personal property items are excluded, from the purchase price.
ADDITIONAL ITEMS EXCLUDED: _____
ADDITIONAL ITEMS INCLUDED: _____
 Seller intends that the above items be excluded or included in offering the Property for sale, but understands that: (i) the purchase agreement supersedes any intention expressed above and will ultimately determine which items are excluded and included in the sale; and (ii) Broker is not responsible for and does not guarantee that the above exclusions and/or inclusions will be in the purchase agreement.

B. (1) LEASED OR NOT OWNED ITEMS: The following items are leased or not owned by Seller:
☐ Solar power system ☐ Alarm system ☐ Propane tank ☐ Water Softener
☐ Other _____

(2) LIENED ITEMS: The following items have been financed and a lien has been placed on the Property to secure payment:
☐ Solar power system ☐ Windows or doors ☐ Heating/Ventilation/Air conditioning system
☐ Other _____
 Seller will provide to Buyer, as part of the sales agreement, copies of lease documents, or other documents obligating Seller to pay for any such leased or liened item.

5. **MULTIPLE LISTING SERVICE:**

A. WHAT IS AN MLS? The MLS is a database of properties for sale that is available and disseminated to and accessible by all other real estate agents who are participants or subscribers to the MLS. As set forth in **paragraph 7**, participants and subscribers conducting public marketing of a property listing must submit the property information to the MLS. Property information submitted to the MLS describes the price, terms and conditions under which the Seller's property is offered for sale (including but not limited to the listing broker's offer of compensation to other brokers). It is likely that a significant number of real estate practitioners in any given area are participants or subscribers to the MLS. The MLS may also be part of a reciprocal agreement to which other multiple listing services belong. Real estate agents belonging to other multiple listing services that have reciprocal agreements with the MLS also have access to the information submitted to the MLS. The MLS may further transmit listing information to Internet sites that post property listings online.

B. WHAT INFORMATION IS PROVIDED TO THE MLS: All terms of the transaction, including sales price and financing, if applicable, (i) will be provided to the MLS in which the Property is listed for publication, dissemination and use by persons and entities on terms approved by the MLS, and (ii) may be provided to the MLS even if the Property was not listed with the MLS. Seller consents to Broker providing a copy of this listing agreement to the MLS if required by the MLS.

C. WHAT IS BROKER'S MLS? Broker is a participant/subscriber to _____ Multiple Listing Service (MLS) and possibly others. That MLS is (or if checked ☐ is not) the primary MLS for the geographic area of the Property. When required by **paragraph 7** or by the MLS, Property will be listed with the MLS(s) specified above.

6. **BENEFITS OF USING THE MLS; IMPACT OF OPTING OUT OF THE MLS:**

A. EXPOSURE TO BUYERS THROUGH MLS: Listing property with an MLS exposes a seller's property to all real estate agents and brokers (and their potential buyer clients) who are participants or subscribers to the MLS or a reciprocating MLS. The MLS may further transmit the MLS database to Internet sites that post property listings online.

B. IMPACT OF OPTING OUT OF MLS: If Seller elects to exclude the Property from the MLS, Seller understands and acknowledges that: (i) Seller is authorizing limited exposure of the Property and NO marketing or advertising of the Property to the public will occur; (ii) real estate agents and brokers from other real estate offices, and their buyer clients, who have access to that MLS may not be aware that Seller's Property is offered for sale; (iii) Information about Seller's Property will not be transmitted from the MLS to various real estate Internet sites that are used by the public to search for property listings and; (iv) real estate agents, brokers and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property.

C. REDUCTION IN EXPOSURE: Any reduction in exposure of the Property may lower the number of offers and negatively impact the sales price.

D. NOT LISTING PROPERTY IN A LOCAL MLS: If the Property is listed in an MLS which does not cover the geographic area where the Property is located then real estate agents and brokers working that territory, and Buyers they represent looking for property in the neighborhood, may not be aware the Property is for sale.

Seller's Initials _____ / _____ Broker's/Agent's Initials _____ / _____

7. **PUBLIC MARKETING OF PROPERTY:**

A. CLEAR COOPERATION POLICY: MLS rules require (☐ Do NOT require – see 7F) that residential real property with one to four units and vacant lot listings be submitted to the MLS within 1 business day of any public marketing.

B. PUBLIC MARKETING WITHIN CLEAR COOPERATION: (i) **Public marketing** includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays, digital communications marketing and email blasts, multi-brokerage listing sharing networks, marketing to closed or private listing clubs or groups, and applications available to the general public. (ii) Public marketing does not include an office exclusive listing where there is direct promotion of the listing between the brokers and licensees affiliated with the listing brokerage, and one-to-one promotion between these licensees and their clients.

C. "COMING SOON" STATUS IMPACT ON MARKETING; Days on Market (DOM): Seller is advised to discuss with Broker the meaning of "Coming Soon" as that term applies to the MLS in which the Property will be listed, and how any Coming Soon status will impact when and how a listing will be viewable to the public via the MLS. Seller does (☐ does not) authorize Broker to utilize Coming Soon status, if any. Seller is further advised to discuss with Broker how any DOM calculations or similarly utilized tracking field works in the MLS in which the Property will be listed.

D. Seller instructs Broker: (MLS may require C.A.R. Form SELM or local equivalent form)
 (1) Seller instructs Broker to market the Property to the public, and to start marketing on the beginning date of this Agreement or ☐ _____ (date).



FIGURE 6.2: Residential Listing Agreement (Exclusive Authorization and Right to Sell) (continued)

Property Address: _____

OR (2) ☐ Seller instructs Broker NOT to market the Property to the public. Seller understands that no public marketing will occur and the scope of marketing that will occur will consist only of direct one-on-one promotion between the brokers and licensees affiliated with the listing brokerage and their respective clients.

E. **Whether 7D(1) or 7D(2) is selected**, Seller understands and agrees that should any public marketing of the Property occur, the Property listing will be submitted to the MLS within 1 business day.

F. ☐ **CLEAR COOPERATION POLICY DOES NOT APPLY:** Paragraphs 7A (other than the language in the parenthetical), 7B, 7D and 7E do not apply to this listing. Broker shall disclose to Seller and obtain Seller's consent for any instruction to not market the Property on the MLS or to the public.

8. **MLS DATA ON THE INTERNET:** MLS rules allow MLS data to be made available by the MLS to additional Internet sites unless Broker gives the MLS instructions to the contrary. Specific information that can be excluded from the Internet as permitted by (or in accordance with) the MLS is as follows:

A. **PROPERTY OR PROPERTY ADDRESS:** Seller can instruct Broker to have the MLS not display the Property or the Property address on the Internet (C.A.R. Form SELI). Seller understands that either of these opt-outs would mean consumers searching for listings on the Internet may not see the Property or Property's address in response to their search.

B. **FEATURE OPT-OUTS:** Seller can instruct Broker to advise the MLS that Seller does not want visitors to MLS Participant or Subscriber Websites or Electronic Displays that display the Property listing to have the features below (C.A.R. Form SELI). Seller understands (i) that these opt-outs apply only to Websites or Electronic Displays of MLS Participants and Subscribers who are real estate broker and agent members of the MLS; (ii) that other Internet sites may or may not have the features set forth herein; and (iii) that neither Broker nor the MLS may have the ability to control or block such features on other Internet sites.

(1) **COMMENTS AND REVIEWS:** The ability to write comments or reviews about the Property on those sites; or the ability to link to another site containing such comments or reviews if the link is in immediate conjunction with the Property display.

(2) **AUTOMATED ESTIMATE OF VALUE:** The ability to create an automated estimate of value or to link to another site containing such an estimate of value if the link is in immediate conjunction with the Property display.

☐ Seller elects to opt out of certain Internet features as provided by C.A.R. Form SELI or the local equivalent form.

9. **SELLER REPRESENTATIONS:** Seller represents that, unless otherwise specified in writing, Seller is unaware of: (i) any Notice of Default recorded against the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Seller's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Seller shall promptly notify Broker in writing if Seller becomes aware of any of these items during the Listing Period or any extension thereof.

10. **BROKER'S AND SELLER'S DUTIES:**

A. **Broker Responsibility, Authority and Limitations:** Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement. Unless Seller gives Broker written instructions to the contrary, Broker is authorized, but not required, to (i) order reports and disclosures including those specified in 10D as necessary, (ii) advertise and market the Property by any method and in any medium selected by Broker, including MLS and the Internet, and, to the extent permitted by these media, control the dissemination of the information submitted to any medium; and (iii) disclose to any real estate licensee making an inquiry the receipt of any offers on the Property and the offering price of such offers.

B. **Presentation of Offers:** Broker agrees to present all offers received for Seller's Property, and present them to Seller as soon as possible, unless Seller gives Broker written instructions to the contrary.

C. **Buyer Supplemental Offer Letters (Buyer Letters):**

(1) Paragraph 8 of the Fair Housing and Discrimination Advisory (C.A.R. Form FHDA) attached to this Agreement informs Seller of the practice of many buyers and their agents of including a Buyer Letter with an offer to try to influence a seller to accept the buyer's offer. Buyer Letters may include photos and video. Whether overt or unintentional, Buyer Letters may contain information about a buyer's or seller's protected class or characteristics. Deciding whether to accept an offer based upon protected classes or characteristics is unlawful. Broker will not review the content of Buyer Letters.

(2) (A) **Seller instructs Broker not to present Buyer Letters**, whether submitted with an offer or separately at a different time. Seller authorizes Broker to specify in the MLS that Buyer Letters will not be presented to Seller.

OR (B) ☐ **Seller instructs Broker to present Buyer Letters.** Broker advises seller that: (i) Buyer Letters may contain information about protected classes or characteristics and such information should not be used in Seller's decision of whether to accept, reject, or counter a Buyer's offer; and (ii) if Seller relies on Buyer Letters, Seller is acting against Broker's advice and should seek the advice of counsel before doing so.

D. Seller agrees to consider offers presented by Broker, and to act in good faith to accomplish the sale of the Property by, among other things, making the Property available for showing at reasonable times and, subject to paragraph 3F, referring to Broker all inquiries of any party interested in the Property. Seller is responsible for determining at what price to list and sell the Property.

E. **Investigations and Reports:** Seller agrees, within 5 (or _____) Days of the beginning date of this Agreement, to order and, when required by the service provider, pay for a Natural Hazard Disclosure report and the following reports:

☐ Structural Pest Control, ☐ General Property Inspection, ☐ Homeowners Association Documents, ☐ Preliminary (Title) Report, ☐ Roof Inspection, ☐ Pool Inspection, ☐ Septic/Sewer Inspection, ☐ Other _____.

If Property is located in a Common Interest Development or Homeowners Association, Seller is advised that there may be benefits to obtaining any required documents prior to entering into escrow with any buyer. Such benefits may include, but not be limited to, potentially being able to lower costs in obtaining the documents and avoiding any potential delays or complications due to late or slow delivery of such documents.

F. Seller further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, attorney fees and costs arising from any incorrect or incomplete information supplied by Seller, or from any material facts that Seller knows but fails to disclose including dangerous or hidden conditions on the Property.

11. **DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf any deposits to be applied toward the purchase price.

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Seller's Initials _____ / _____



RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 3 OF 5)

FIGURE 6.2: Residential Listing Agreement (Exclusive Authorization and Right to Sell) (continued)

Property Address: _____

- 12. AGENCY RELATIONSHIPS:**
- A. DISCLOSURE:** The Seller acknowledges receipt of a ☒ "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
- B. SELLER REPRESENTATION:** Broker shall represent Seller in any resulting transaction, except as specified in paragraph 3F.
- C. POSSIBLE DUAL AGENCY WITH BUYER:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Seller and buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent representing both Seller and Buyer. If a Buyer is procured directly by Broker or an associate-licensee in Broker's firm, Seller hereby consents to Broker acting as a dual agent for Seller and Buyer. In the event of an exchange, Seller hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Seller understands and agrees that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.
- D. CONFIRMATION:** Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Seller's execution of a purchase agreement.
- E. POTENTIALLY COMPETING SELLERS AND BUYERS:** Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this Agreement. Seller acknowledges receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).
- 13. SECURITY, INSURANCE, SHOWINGS, AUDIO AND VIDEO:** Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a key safe/lockbox, a showing of the Property, or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Seller agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Seller. Persons visiting the Property may not be aware that they could be recorded by audio or visual devices installed by Seller (such as "nanny cams" and hidden security cameras). Seller is advised to post notice disclosing the existence of security devices.
- 14. PHOTOGRAPHS AND INTERNET ADVERTISING:**
- A.** In order to effectively market the Property for sale it is often necessary to provide photographs, virtual tours and other media to buyers. Seller agrees (or ☐ if checked, does not agree) that Broker or others may photograph or otherwise electronically capture images of the exterior and interior of the Property ("Images") for static and/or virtual tours of the Property by buyers and others for use on Broker's website, the MLS, and other marketing materials and sites. Seller acknowledges that if Broker engages third parties to capture and/or reproduce and display Images, the agreement between Broker and those third parties may provide such third parties with certain rights to those Images. The rights to the Images may impact Broker's control or lack of control of future use of the Images. If Seller is concerned, Seller should request that Broker provide any third parties' agreement impacting the Images. Seller also acknowledges that once Images are placed on the Internet neither Broker nor Seller has control over who can view such Images and what use viewers may make of the Images, or how long such Images may remain available on the Internet. Seller further assigns any rights in all Images to the Broker/Agent and agrees that such Images are the property of Broker/Agent and that Broker/Agent may use such Images for advertising, including post sale and for Broker/Agent's business in the future.
- B.** Seller acknowledges that prospective buyers and/or other persons coming onto the property may take photographs, videos or other images of the property. Seller understands that Broker does not have the ability to control or block the taking and use of Images by any such persons. (If checked) ☐ Seller instructs Broker to publish in the MLS that taking of Images is limited to those persons preparing Appraisal or Inspection reports. Seller acknowledges that unauthorized persons may take images who do not have access to or have not read any limiting instruction in the MLS or who take images regardless of any limiting instruction in the MLS. Once Images are taken and/or put into electronic display on the Internet or otherwise, neither Broker nor Seller has control over who views such Images nor what use viewers may make of the Images.
- 15. KEYSAFE/LOCKBOX:** A key safe/lockbox is designed to hold a key to the Property to permit access to the Property by Broker, cooperating brokers, MLS participants, their authorized licensees and representatives, authorized inspectors, and accompanied prospective buyers. Seller further agrees that Broker, at Broker's discretion, and without further approval from Seller, shall have the right to grant access to and convey Seller's consent to access the Property to inspectors, appraisers, workers, repair persons, and other persons requiring entry to the Property in order to facilitate the sale of the Property. Broker, cooperating brokers, MLS and Associations/Boards of REALTORS® are not insurers against injury, theft, loss, vandalism or damage attributed to the use of a key safe/lockbox.
- A.** Seller does (or if checked ☐ does not) authorize Broker to install a key safe/lockbox.
- B. TENANT-OCCUPIED PROPERTY:** If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a key safe/lockbox (C.A.R. Form KLA).
- 16. SIGN:** Seller does (or if checked ☐ does not) authorize Broker to install a FOR SALE/SOLD sign on the Property.
- 17. EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.
- 18. ATTORNEY FEES:** In any action, proceeding or arbitration between Seller and Broker to enforce the compensation provisions of this Agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing Seller or Broker, except as provided in paragraph 22A.
- 19. ADDITIONAL TERMS:** ☐ REO Advisory Listing (C.A.R. Form REOL) ☐ Short Sale Information and Advisory (C.A.R. Form SSIA)
- ☐ Trust Advisory (C.A.R. Form TA)
- ☐ Seller intends to include a contingency to purchase a replacement property as part of any resulting transaction
- _____
- _____
- _____



FIGURE 6.2: Residential Listing Agreement (Exclusive Authorization and Right to Sell) (continued)

Property Address: _____

- 20. MANAGEMENT APPROVAL:** If an associate-licensure in Broker's office (salesperson or broker-associate) enters into this Agreement on Broker's behalf, and Broker or Manager does not approve of its terms, Broker or Manager has the right to cancel this Agreement, in writing, within **5 Days** After its execution.
- 21. SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Seller and Seller's successors and assigns.
- 22. DISPUTE RESOLUTION:**
- A. MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them regarding the obligation to pay compensation under this Agreement, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. Exclusions from this mediation agreement are specified in paragraph 22B.
- B. ADDITIONAL MEDIATION TERMS: The following matters shall be excluded from mediation: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation provisions.**
- C. ARBITRATION ADVISORY:** If Seller and Broker desire to resolve disputes arising between them through arbitration rather than court, they can document their agreement by attaching and signing an Arbitration Agreement (C.A.R. Form ARB).
- 23. ENTIRE AGREEMENT:** All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any photocopy or facsimile, may be executed in counterparts.
- 24. OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants that: (i) Seller is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Seller has the authority to both execute this Agreement and sell the Property. Exceptions to ownership, title and authority are as follows: _____

- ☐ **REPRESENTATIVE CAPACITY:** This Listing Agreement is being signed for Seller by an individual acting in a Representative Capacity as specified in the attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S). Wherever the signature or initials of the representative identified in the RCSD appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. Seller (i) represents that the entity for which the individual is signing already exists and (ii) shall Deliver to Broker, within 3 Days After Execution of this Agreement, evidence of authority to act (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, resolution, or formation documents of the business entity).

By signing below, Seller acknowledges that Seller has read, understands, received a copy of and agrees to the terms of this Agreement.

Seller _____ Date _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

Seller _____ Date _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

☐ Additional Signature Addendum attached (C.A.R. Form ASA)

Real Estate Broker (Firm) _____ DRE Lic.# _____
 Address _____ City _____ State _____ Zip _____
 By _____ Tel. _____ E-mail _____ DRE Lic.# _____ Date _____
 By _____ Tel. _____ E-mail _____ DRE Lic.# _____ Date _____

☐ Two Brokers with different companies are co-listing the Property. Co-listing Broker information is on the attached Additional Broker Acknowledgement (C.A.R. Form ABA).

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RLA REVISED 6/21 (PAGE 5 OF 5)



RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 5 OF 5)

Nevertheless, if a broker takes a net listing, California law requires that the broker disclose, in writing, the selling price and the broker's compensation before acceptance of any offer.

Note: An agent's failure to disclose the selling price under a net listing is cause for license revocation or suspension.

Option combined with a listing. An option is an irrevocable right to buy a property at an agreed price. An **option combined with a listing** entitles the broker to compensation under the listing if the property is sold to a third person, as well as the agent's right to buy the property herself. Law forbids a listing broker who has an option combined with a listing to profit at the expense of the owner. If the broker finds a buyer willing to pay more than the option price, and if the broker then exercises an option to buy to make a greater profit from resale of the property, the broker must make a full disclosure to the owner. California law covering this is stated as follows:

If a broker employed to sell property is also given an option to purchase the property himself, he occupies the dual status of agent and purchaser and is not entitled to exercise his option except by divesting himself of his obligation as agent by making a full disclosure of any information in his possession as to the prospect of making a sale to another.

Even though an option listing may be legal if the proper disclosures are made, an agent who makes an extraordinary profit might nevertheless become involved in a lawsuit. This action could negatively reflect on his or her reputation. It is strongly recommended that both net listings and option listings be avoided.

Buyer representation agreement—exclusive. Buyers want to be shown the property that best meets their needs, regardless of the fact it is listed for sale or for sale by owner or lender. They also want to purchase at the lowest possible price. To accomplish these goals, buyers want their own agents. New contract forms were developed for buyer representation. See Figure 6.3. Although this form is for an exclusive representation, buyer listings (like seller listings) could be exclusive agency, under which a buyer could buy without an agent and not be obligated to pay a fee, or could even be an open listing.

The form is similar in many respects to the exclusive-authorization-and-right-to-sell listing. It gives authority to the broker to act as the agent of the buyer rather than the seller. The buyer's broker looks at the entire transaction from the buyer's standpoint, without a shared loyalty. The new contract form allows the buyer to tailor the broker's services to meet the buyer's needs and adjust the compensation accordingly.

The buyer's broker is held to the same standard of performance in serving the buyer as the listing broker owes to the seller. The commission is negotiable, and the contract must contain a definite termination date.

The buyer's broker, who is entitled to be compensated by the buyer, is motivated to show the buyer all known applicable properties, including:

- For-sale-by-owner properties
- Foreclosure and probate sales
- Unlisted properties
- Open listings
- Any other available properties

Figure 6.3 is a written contract between the broker and a buyer. Therefore, it must be filled out correctly and signed by the necessary parties. (**Note:** Specific clauses and organization will vary in forms prepared by different publishers.)

ANALYSIS OF RESIDENTIAL LISTING AGREEMENT EXCLUSIVE AUTHORIZATION-AND-RIGHT-TO-SELL LISTING FORM

Because the listing agreement is a written contract between the broker and the seller, it must be filled out correctly and signed by the necessary parties. The exact wording on each listing form will vary, depending on the details of the transaction. However, certain basic provisions are part of each listing contract. Figure 6.2 is a form for an exclusive-authorization-and-right-to-sell listing. The following paragraphs analyze this sample form.

Paragraph 1: Exclusive-Right-to-Sell

Enter here the name of the owner and the real estate office or broker receiving the listing. If a salesperson rather than a broker takes the listing, the salesperson should write his or her employing broker's name. The salesperson completing the form signs his or her name at the bottom of the form. Note that the words *exclusive* and *irrevocable* make this listing an exclusive authorization and right to sell.

After the broker's name, enter the time period, including the beginning and the termination dates. Three-month to six-month periods are common; however, if the broker thinks the property will take longer to sell, he or she may ask for more time.

Next, enter the location of the property by city and county as well as by an unmistakable address within the city. Occasionally, in addition to the street address, the location by lot, block, and tract or a metes-and-bounds legal description may be given. It may be necessary to add a legal description as a signed attachment to the listing.

Check appropriate box if property is a mobilehome and/or a probate sale.

Paragraph 2: Listing Price and Terms

The terms of sale include the price at which the property is being offered. Additional space is provided for stipulating the exact terms the owner requires to sell

the property. This includes financial arrangements, such as cash, second trust deeds, or loan assumptions. Unless terms are specified, the owner is not obligated to pay a commission when refusing a full-price offer unless the offer is for cash.

Paragraph 3: Compensation to Broker

Boldface type points out that commission is negotiable and not set by law. This statement is required for listings of one- to four-unit residential properties.

Subparagraph A indicates the rate or amount of commission that will be paid if the property is sold.

Subparagraph A-1 stipulates that commission is due regardless of who actually produces a potential buyer. All that is required is that the purchase offer either meets the price and terms of the agreement (as stated in Paragraph 2) or includes a different price and terms that are acceptable to the seller. The offer also must be made during the listing period stated in Paragraph 1.

Subparagraph A-2 is the **safety clause**. It provides that the listing agent shall be entitled to a commission if the property is sold within a specified number of days after expiration of the listing to a prospective buyer whose name was furnished by the agent to the owner within three calendar days of expiration of the listing or was sold to a buyer who was shown and physically entered the property during the listing period.

Subparagraph A-3 states that the seller agrees to pay a commission if the seller sells, leases, or rents the property; withdraws it from the market without the consent of the broker; or otherwise renders the property unavailable for sale before the expiration date.

Subparagraph B provides that if completion of the sale is prevented by a party other than the seller and the seller collects damages, then the total commission is to be the lesser of the commission due under Paragraph 4A or one-half of the damages recovered after deducting expenses.

Subparagraph C provides for any additional seller compensation, such as MLS fees or other broker expenses.

Note: Several brokerage firms have been charging sellers a transaction fee or document preparation fee in the \$200 range in addition to the commission. If any additional charges are to be made to the seller, they should be clearly set forth in the listing contract. If the fee is in conjunction with a federally related loan, then the fee may violate the Real Estate Settlement Procedures Act, which requires an actual service provided for every fee. Agents may not charge duplicate fees.

Subparagraph D provides that the broker may cooperate with other brokers and divide the commission in any manner acceptable to them or an agreed percentage.

Subparagraph E states that the seller irrevocably assigns to the broker the broker's compensation from the seller's proceeds. In the past, some sellers have notified an

escrow not to pay the broker but to turn the funds over to the sellers. Because the escrow is not the agent of the broker, the escrows complied. An assignment agreement protects the broker's fee.

Subparagraph F is the owner's warranty that the owner is not obligated to pay a commission to any other broker if the property is sold during the listing period, with the exception of listed prospective buyers. If such a listed buyer purchases the property during the listing, the broker is not obligated to pay the listing broker and the listing broker is not obligated to represent the owner in the sale.

Paragraph 4: Items Included and Excluded

Subparagraph A provides for items of personal property that may be included in the purchase are listed, as are items of real or personal property excluded from the sale. Misunderstandings can arise as to what property the seller intends to include, and listing the items will help alleviate such a problem. Examples of personal property often sold with a residence are major appliances and drapes.

Subparagraph B covers leased and lienied items.

Paragraph 5: Multiple Listing Service

Subparagraph A provides the parties agree that listing information is to be provided to an MLS unless directed otherwise by the owner. Without authorization from the owner, the agent would not have the right to cooperate with subagents or give the listing or sale information to an MLS or to third parties.

The seller has the right to exclude property information from websites, as well as website features such as viewer comments.

Subparagraph B provides for the procedure to exclude listing from the MLS.

Subparagraph C indicates if the broker is a subscriber to the MLS and if it is the primary MLS used.

The seller initials a "Benefits of Using the MLS" block that also covers the effect of opting out of MLS.

Paragraph 6: Benefits of Using the MLS

The benefits are explained and the seller is given the option of opting out on inclusion, but the effect of doing so is explained.

Paragraph 7: Public Marketing of Property

Subparagraph A states an owner can opt out of displaying property on an MLS.

Subparagraph B explains what public marketing includes.

Subparagraph C explains the use and effect of "coming soon" and allows the owner to opt out of its use.

Subparagraph D sets the date to begin public marketing or allows the owner to decline public marketing.

Subparagraph E provides submission to an MLS within one day if property is to be publicly marketed.

Subparagraph F, if checked, allows the broker to not cooperate with other agents.

Paragraph 8: MLS Data on the Internet

Subparagraph A can instruct an MLS not to provide a property address.

Subparagraph B can advise an MLS not to include particular features, including the ability to write comments and reviews and providing an automated estimate of value.

Paragraph 9: Seller Representations

The seller represents that he is unaware of a notice of default recorded against the property; delinquencies due under loans; bankruptcy, insolvency, or other proceedings affecting the property as well as any litigation pending or threatened that could affect the seller's ability to sell; and any current or proposed special assessments. If the seller becomes aware of any of the above during the listing, the seller agrees to promptly notify the agent.

Paragraph 10: Broker's and Seller's Duties

Subparagraph A explains a broker's responsibility, authority, and limitations.

The broker agrees to use diligence in achieving the purpose of the listing agreement. Order reports and disclose as required.

Subparagraph B provides for presentations of offers. Unless the owner gives instructions to the contrary, all offers are to be presented.

Subparagraph C covers buyer supplemental offer letters. Submit buyer letters unless ordered otherwise.

Subparagraph D states the seller agrees to consider all offers in good faith.

Subparagraph E notes investigations and reports. The seller agrees to pay for checked reports.

Subparagraph F states the seller agrees to hold the agent harmless for incorrect or incomplete information provided by the owner.

Paragraph 11: Deposit

This section authorizes the listing agent to accept the deposit. Without this authorization, an agent taking a deposit could be doing so as the agent of the buyer.

Paragraph 12: Agency Relationships

Subparagraph A states the seller's acknowledgment of the receipt of the Disclosure Regarding Real Estate Agency Relationships.

Subparagraph B states the broker will represent the seller.

Subparagraph C covers possibility of dual agency.

Subparagraph D provides for confirmation of agency prior to execution of any purchase agreement.

Subparagraph E explains that the broker represents other sellers and buyers.

Paragraph 13: Security, Insurance, Showings, Audio, and Video

This section explains that the broker is not responsible for loss or damage to personal property, regardless of the presence of a lockbox, and that the owner must take precautions to protect valuables and obtain insurance for risks involved.

Paragraph 14: Photographs and Internet Advertising

An owner can agree or refuse to allow photographs to be used for MLS listings and advertising. The owner acknowledges that visitors may take photos, but the owner has the option of having MLS listing indicate photos are not to be taken.

A broker can instruct an MLS that pictures may only be taken for appraisal and professional inspection purposes.

Paragraph 15: Key Safe/Lockbox

This provides authorization to install a lockbox. The lockbox makes the property more available for showing by other agents in the MLS. The agent is not liable to the owner for loss or damage resulting from access via the lockbox. If the seller wants the property shown by appointment only, then the listing agent may not want to use a lockbox, and the seller can elect whether or not to use it.

Owners should realize that by refusing to allow a lockbox, the number of showings by other offices will likely be reduced. Showings by other offices would likely require the listing agent to accompany selling agents to view the property.

Paragraph 16: Sign

Putting a For Sale sign on the property makes the property more recognizable. However, the agent must obtain authorization from the seller to do so.

Paragraph 17: Equal Housing Opportunity

The property is offered in compliance with antidiscrimination laws. Members of a protected class cannot be denied the right to purchase property due to their protected class.

Paragraph 18: Attorney Fees

If there is any disagreement between the seller and broker and they go either to court or to arbitration, the loser in either incident must pay the costs. This paragraph tends to reduce frivolous lawsuits.

Paragraph 19: Additional Terms

Space is provided for any other owner-broker agreements or terms.

Paragraph 20: Management Approval

If an associate licensee enters into this agreement, the broker or manager has the right to cancel this agreement within five days.

Paragraph 21: Successors and Assigns

This agreement shall be binding upon the seller and seller's successors and assigns.

Paragraph 22: Dispute Resolution

Subparagraph A provides that the broker and seller agree to mediate any disputes arising from this agreement prior to any other action that is available. They are not, however, required to resolve the dispute through mediation.

Subparagraph B sets forth items excluded from mediation.

Subparagraph C provides that parties may wish to settle differences by arbitration and sign an arbitration agreement.

Paragraph 23: Entire Agreement

It is agreed that this agreement is the entire agreement and may not be contradicted by prior agreements or verbal statements.

Paragraph 24: Ownership, Title, and Authority

This paragraph warrants that the sellers are the only people who have title to the property unless indicated otherwise, and that the sellers have the authority to execute this agreement and sell the property. (The agent should check public records or their title company to make sure the seller has title.)

Signatures

The seller acknowledges that she has read, understands, and accepts the agreement and has received a copy of it.

FIGURE 6.3: Buyer's Listing Agreement

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	BUYER'S LISTING AGREEMENT Exclusive Right to Buy, Exchange or Option				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border-bottom: 1px solid black;">Prepared by: Agent _____</td> <td style="width: 50%; border-bottom: 1px solid black;">Phone _____</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Broker _____</td> <td style="border-bottom: 1px solid black;">Email _____</td> </tr> </table>		Prepared by: Agent _____	Phone _____	Broker _____	Email _____
Prepared by: Agent _____	Phone _____				
Broker _____	Email _____				
NOTE: This form is used by a buyer's agent when employed by a prospective buyer as their sole agent, to prepare an offer to render services on behalf of the buyer to locate and acquire property for a fixed period of time.					
DATE: _____, 20____, at _____, California. <i>Items left blank or unchecked are not applicable.</i>					
1. RETAINER PERIOD: 1.1 Buyer hereby retains and grants to Broker the exclusive right to locate real property of the type described below and to negotiate the terms and conditions for its purchase, lease or option, acceptable to Buyer, for the period beginning on _____, 20____ and terminating on _____, 20____.					
2. BROKER'S OBLIGATIONS: 2.1 Broker to use diligence in the performance of this employment.					
3. GENERAL PROVISIONS: 3.1 Buyer acknowledges receipt of the Agency Law Disclosure. [See RPI Form 305] 3.2 Buyer authorizes Broker to cooperate with other brokers and divide with them any compensation due. 3.3 Before any party to this agreement files an action on a dispute arising out of this agreement which remains unresolved after 30 days of informal negotiations, the parties agree to enter into non-binding mediation administered by a neutral dispute resolution organization and undertake a good faith effort during mediation to settle the dispute. 3.4 The prevailing party in any action on a dispute will be entitled to attorney fees and costs, unless they file an action without first offering to enter into mediation to resolve the dispute. 3.5 This agreement will be governed by California law.					
4. BROKERAGE FEE: NOTICE: The amount or rate of real estate fees is not fixed by law. They are set by each Broker individually and may be negotiable between Client and Broker.					
4.1 Buyer agrees to pay Broker <input type="checkbox"/> _____ % of the purchase price, or <input type="checkbox"/> _____, IF: a. Buyer, or any person acting on Buyer's behalf, purchases, leases, exchanges for or obtains a purchase option on real property sought under this agreement during the retainer period. b. Buyer terminates this employment of Broker during the listing period. c. Within one year after termination of this agreement, Buyer enters into negotiations which result in Buyer's acquisition of an interest in any property Broker has solicited information on or negotiated with its owner, directly or indirectly, on behalf of Buyer prior to this agreement's termination. Broker to identify prospective properties by written notice to Buyer within 21 days after termination. [See RPI Form 123] 4.2 Buyer's obligation to pay Broker a brokerage fee is extinguished on Broker's acceptance of a fee from Seller or Seller's Broker of property acquired by Buyer. 4.3 In the event this agreement terminates without Broker receiving a fee under \$4.1 or \$4.2, Buyer to pay Broker the sum of \$ _____ per hour of time accounted for by Broker, not to exceed \$ _____.					
TYPE OF PROPERTY SOUGHT: GENERAL DESCRIPTION _____ LOCATION _____ SIZE _____ RENTAL AMOUNT/TERM _____					
I agree to render services on the terms stated above. Date: _____, 20____ Buyer's Broker: _____ Broker's CalBRE #: _____ Buyer's Agent: _____ Agent's CalBRE #: _____ Signature: _____ Address: _____ Phone: _____ Cell: _____ Email: _____	I agree to employ Broker on the terms stated above. <input type="checkbox"/> See attached Signature Page Addendum. [RPI Form 251] Date: _____, 20____ Buyer's Name: _____ Signature: _____ Buyer's Name: _____ Signature: _____ Address: _____ Phone: _____ Cell: _____ Email: _____				
<table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">FORM 103</td> <td style="width: 25%;">12-15</td> <td style="width: 50%;">©2015 RPI — Realty Publications, Inc., P.O. BOX 5707, RIVERSIDE, CA 92517</td> </tr> </table>		FORM 103	12-15	©2015 RPI — Realty Publications, Inc., P.O. BOX 5707, RIVERSIDE, CA 92517	
FORM 103	12-15	©2015 RPI — Realty Publications, Inc., P.O. BOX 5707, RIVERSIDE, CA 92517			

ANALYSIS OF THE BUYER REPRESENTATION AGREEMENT—EXCLUSIVE

Compare this buyer's listing with the seller listing (exclusive-authorization-and-right-to-sell agreement) in Figure 6.2. You will notice similarities and differences.

The **exclusive-right-to-represent buyer agreement** sets forth the type of property that the buyer wishes to purchase, its size location, and the price. The specific obligations of the broker are set forth.

The general provisions include acknowledgment of agency disclosure, an authorization to cooperate with other brokers, dispute resolution and an attorney fee provision.

The buyer agrees to pay broker agreed compensation if a purchase is made or owner terminates agreement. A safety provision includes entitlement to compensation for a stated period after termination if a purchase is made of a property the broker introduced the buyer to and identified said property to the buyer within 21 days of termination of the agreement.

The buyer's obligation to pay a brokerage fee is adjusted by any fee the broker accepts from the seller or seller's agent.

THE LISTING PROCESS

Real estate brokers must pay careful attention to listing details to ensure a smooth transaction.

Preparing for the Listing

An old adage about the listing process is that it is "80% preparation and 20% selling." The time spent on research before the first appointment with a prospective seller is critical in obtaining the listing.

Step 1: Obtain information about the property. Ownership records, as well as public information about a property, is available online from public as well as private websites. Sites such as *www.propertyshark.com* can provide ownership records, information or recent building permits, taxes, assessor data, etc.

Generally, real estate firms use their title company to obtain property information. A property profile can generally be obtained quickly using public records searches available within any local MLS. Besides title and liens, you should ask for a search of federal tax liens. In addition to the public data available through the MLS, your title company also can give you comparable sales by neighborhood, or even by street, and provide copies of deeds if desired.

Step 2: Prepare your comparative market analysis (CMA).
(See Unit 5.)

Step 3: Drive by the current and expired listings and by the property that has sold. Drive by the prospective property and then by the comparables to get a feeling for the amenities of the property you are going to list as well as to compare it visually with other existing and expired listings in the marketplace. Take photos, if none are available, so the owners can see the types of property their home will be competing with for buyers.

Keep an open mind as to value until you have analyzed the available data. Just like owners, agents will sometimes have preconceived notions about value, based on a single sale or misinformation.

Check comparable properties before you go for your listing presentation. Often what appears as a comparable on your printout is not even close to being a comparable property when utility and desirability are considered. If an owner knows the property you are using as a comparable and knows of problems it has that should have excluded it as a comparable, you will have lost credibility as an expert. Your chances of obtaining a listing could be significantly reduced.

The Sales Listing Interview

With your preparation and research taken care of, you are ready to call on your listing prospect.

On the first visit, you should ascertain the owners' motivation for selling and view the property to prepare your comparative market analysis and your listing presentation. Normally, you will make your listing presentation on your second visit to the property; however, if the owners appear receptive and you have a good feel for the value, you should go into your listing presentation during your first visit to the property.

After arriving for your second visit, ask the owners if it is all right if you go through their home once again. This relieves tension and shows your interest. If you haven't yet determined the owners' reason for selling, ask them. They will generally give you an honest response. Ask what the owners have done to the home. Owners will be more receptive to agents who they feel appreciate their home.

An excellent place to present your material to owners is the kitchen table. It presents a nonthreatening informal setting, and you are able to sit close to the owners.

(It is easier to be argumentative from a distance.) You also want them to be able to easily view your visual material.

The comparative market analysis (CMA). In presenting your comparative market analysis, don't rush. You must show you appreciate their house, but present the comparables fairly to lead up to your recommendations. Watch owners for reactions. If they show little reaction, ask questions such as "Are there any recent area sales that I missed?"

Sometimes owners have an inflated idea of what their property is worth. It may be based on a sale under different conditions or on what they heard someone say a house sold for. Often owners have a value in mind based simply on what they want. Consider the following:

[Mrs. Jones], buyers, not sellers or brokers, determine market value. I have shown you what homes similar to yours are for sale at as well as what similar homes have sold for. Is there any information you know of that I have not considered?

If the owners say that another agent told them they could get more for their house, ask to see the comparative market analysis that the price was based on. Chances are there won't be one. Then consider the following rebuttal:

I don't know how that agent was able to arrive at a value so quickly and without a detailed analysis. A value off the top of one's head is a hunch at best. If it is too high, a listing at that price simply means a lot of time wasted and no sale. I showed you the effect of overpricing a home on the likelihood of a sale. If a hunch is too low, someone will get a bargain at your expense. I won't price your home on a hunch, and I'm sure you wouldn't want me to do that.

There are many approaches, but all have the same goal: to convince the owners that your value has validity and that offering the property at a competitive price would be in the owners' best interests.

You want to get the owners to agree on an offering price at this time. If you can't obtain an agreement, your further efforts will be futile. However, if the owners agree on an offering price, you are more than halfway along to a listing:

Do you agree with my recommendation that your home should be placed on the market for (\$___)?

Accepting a listing at an unreasonably high price could be a violation of your fiduciary duty to your client.

If an owner is adamant about to what you consider an unrealistically high price, a short drive to some neighboring properties for sale might bring the buyers back to earth. Choose unoccupied homes with lockboxes to show without disturbing owners.

If the owners have been very receptive to your presentation with the comparative market analysis or if the owners contacted you to list the property, it should not be necessary for you to go through the listing presentation. You can cut right to the listing. Start by obtaining the owners' signatures on the Estimated Seller's Proceeds form. (See Unit 5.) Never delay when parties are receptive because delay can lead to indecision.

The listing presentation. After you have finished presenting your comparative market analysis, ask the owners if they can spare a few minutes for you to present some information they will want to hear. Because you have gone to a great deal of effort on behalf of the owners, you can expect a positive response.

Go through the listing presentation book or computer presentation, using narratives such as those developed in Unit 5. Of course, use your narratives with your visuals as you turn the pages of your book. When you have finished, you should be ready for a closing.

PowerPoint, a Microsoft developed program, is an excellent program to use for preparation of a computer presentation. It can combine text with graphics, slides, movies, and audio for a professional and effective presentation. Additionally, if you are making your presentation using an iPad or other tablet device, consider preparing your presentation in Keynote or another third-party application.

Be Positive

Use positive terms in your presentation. An agency representation indicates you will be doing something for an owner, whereas listing may have a negative connotation. In the same manner, a fee is something that they can understand is due a professional, but commission is a word that can have a negative connotation.

Make certain the owners understand what they will actually net from an offer. Be up front with them. When you use the Estimated Seller's Proceeds form, be realistic in your figures. As previously stated, it is better to be on the low side than to estimate a net significantly higher than the owner will actually receive. Disappointed owners lead to loss of goodwill toward your firm and could result in a failure to close the sale. After the sellers sign the statement, give them a copy.

You should explain agency relationships and have the owners sign that they have received a copy of the agency disclosure (Unit 3). While the signing of the Seller's Estimated Proceeds form and the Disclosure Regarding Real Estate Agency Relationships form do not obligate the owners, it should now be a natural act to sign the listing when it is presented. A **trial closing** tries for an agreement to sign the listing. The choice should not be to list or not to list. As an example, the question "Would you want me to serve as your marketing agent for 90 days or should we make it 120 days?" gives owners a choice between two positives, not between a positive and a negative.

If the owners respond positively to your trial closing, give each of the owners a copy of the listing. It could be prepared in advance so you need to insert only

minor items. Go through the listing slowly. Answer any owner questions. When you get to items calling for initials, give each owner a pen and ask each to initial where recommended. Make certain they understand that the option is theirs.

Every presentation you give will not necessarily run smoothly. There will be objections that must be overcome in a straightforward, logical manner. You might consider starting with the following:

I'm glad you mentioned that because. . .

That's an excellent point. You're absolutely right but. . .

Owners who hesitate to sign the agreement are signaling that they have a problem. You must find out what the problem is if you are to overcome it. Most of the objections should be readily overcome by material covered in Unit 5 and included in your listing presentation.

A common objection is, "I want to sell, in fact I need to sell. That's why I can't be tied up with a listing." Your response could be:

That's exactly why I suggest an exclusive-right-to-sell agency agreement at the price I have indicated. We know from experience that it takes longer for an owner not represented by an agent to sell a home than it takes with an agent. In addition, in working on your own, you more than double your chance of running into time-consuming and costly problems when you do find a buyer. You are not tying up your property with an exclusive-right-to-sell agency agreement; instead, you are taking the first step toward a sale.

Many objections center on paying compensation. As previously stated, you should always refer to it as a fee. Consider the following approaches:

Who pays your fee?

The fee is paid out of money the buyer puts up. The buyer's price includes the fee so they feel they are the ones paying it. When buyers know that an agent isn't involved, they typically reduce any offer that they're willing to make by an amount to cover the fee involved with an agent even if the price was reduced to reflect this. Buyers may not be willing to split it because they may feel that it comes out of their money.

If an owner asks you to reduce your fee, one approach to use would be:

A reduced fee would not be fair to you. Studies have shown that a reduced fee increases the length of time it takes for a sale as well as reduces the likelihood of a sale. Your property is competing with other properties paying normal fees. If you were an agent, which property would get our attention?

If there are varying commission rates in your area, check the records of your listing service before making the listing presentation. You may discover that listings taken by firms offering a significantly lower fee have a lower sales record than listings taken by your firm at a more normal fee. If so, you could present this information visually with a bar graph and use a narrative such as:

Based on the computer records of [Cedar Creek Brokers Association], listings taken by [Champion Realty] at a [6%] fee have a [46%] greater likelihood of being sold

during the listing period than listings taken by other firms at a [4%] fee. This points out that you get what you pay for. A lower fee simply reduces the likelihood of a sale. A lower fee may mean no fee at all and an unsold house. Is that a bargain?

Another objection concerns *listing price*. Some owners want to add your fee to what they want for the home to determine an offering price. Owners may be unrealistic for many reasons, but it isn't enough just to get a listing; you want a listing that is likely to sell. While you have a duty to an owner to get the maximum possible from a property, you also have a duty to advise the owner as to what would be in the owner's best interests.

Several approaches you can use include:

Let's assume that we offer the property at the price you suggest [\$]. Assume further that we find a buyer at that price. The sale would be unlikely to be made because lenders make loans based on appraisals of market value, not what a buyer is willing to pay. From my comparables, I have shown you data on market value. Appraisers have access to this same data. What do you suppose will happen when the buyer is notified that the loan is not approved because the property is worth less than the buyer has offered?

Too high a list price does not help the owner.

Assume you are a buyer and you are looking at homes and you see these comparable properties I have shown you at lower prices than your home is listed at. What do you suppose a buyer's reaction will be? Pricing that is not reflective of the market would not be fair to you, because you would be eliminating many potential buyers.

An overpriced listing is unlikely to sell. Your failure will help another agent in obtaining a listing at a realistic price. By taking an overpriced listing, you will get a reputation both of failure and of having an inventory of overpriced properties.

If the owners indicate that they want to list at their price to see what happens and perhaps reduce the price later, an approach to use would be:

When a property is realistically listed, agents are enthusiastic and will spend their best efforts on selling that property. If they regard a listing as a "hard sell," they will show the property only if more attractively priced properties are not available.

When you finally reduce your price, that price adjustment is not greeted with the enthusiasm of a new listing. In addition, when buyers know a price was reduced and the property has been on the market for a long time, they will sense desperation. Any offer will then likely be significantly less than the reduced price. If you really want to sell your home at the best possible price, I suggest we list it at [\$]. Doesn't this make sense?

Sometimes it takes a clincher. Final persuasion for an owner who has been trying to sell without an agent could be:

[Mr. and Mrs. Jones], do you realize that this house is holding you captive? With your sign and your ads, you likely feel that you have to be here every weekend waiting for the telephone or doorbell to ring. Even people who say they will be here seldom show up. I'm offering to relieve you of these obligations.

Whenever you make a closing that implies a signature, offer the owner a pen. The owner who puts it down still has questions that must be eliminated. Don't be afraid to try again and again for a closing. A closing is not a one-time win-or-lose proposition.

Prepare yourself so answers to objections and closings come naturally. If you can't close a listing, you won't be able to close a sale. If you can't close a sale, you become an order taker who shows merchandise and waits for a buyer to decide, not a problem solver—and certainly not a professional salesperson.

Follow through. After you obtain the listing, thank the owners. Be certain you leave the following items:

- A copy of the signed listing with your card attached
- A copy of your comparative market analysis
- The Estimated Seller's Proceeds form
- A copy of the signed agency disclosure form if not covered in the listing

Let the owners know what will be happening (your marketing plan) when the for sale sign will be installed and when you will be contacting them again.

The Buyer Agency Presentation

It is difficult to get buyers to agree that you should be their exclusive agent to find them property to buy unless they feel that you fully understand their needs, that you are competent and able to locate a property for them, and that it would be in their best interests to have you as their exclusive agent. Similarly, you don't want to take an agency responsibility and expend your best efforts for prospective buyers until you realize they are motivated to buy, have the resources and/or credit to consummate a purchase, and have needs you can reasonably fulfill.

A good time to make a presentation for exclusive-agency representation to buyers would be after you have interviewed them about their needs, shown them several properties, and questioned them further about property impressions. By then, you will have understood fairly well the buyers and sold yourself as a professional.

A good approach would be to tell your prospective buyer(s) that you would like to have them obtain preapproval for a loan so that they'll have the financing when they find a property. By handling an internet loan application and printing out a loan preapproval letter, you will show your professionalism and make the prospects feel they are a step closer to a new home. A loan preapproval will also enhance the likelihood of an offer being accepted by an owner.

A number of internet sites are available where your client can get preapproved for a loan in as little as 15 minutes. You should explain to your clients that being preapproved, subject to verification, does not obligate the buyers to deal with that specific lender. The preapproval letter can be attached to any offers made.

You could now conduct a presentation using buyer-listing presentation material, or you could use a narrative such as the following:

I would like to help you in finding the best home for you. I imagine we will spend a good deal of time together in accomplishing this goal. Do you feel comfortable working with me?

You can, of course, expect a positive response and people are unlikely to say they are uncomfortable working with you.

Most agents are really agents of the owners and have a duty to get the highest price possible for a property. However, I would like to represent you alone rather than an owner. As your agent, my duty would be to fulfill your needs with the best property for you at the lowest price. Is that what you want?

Prospective buyers can be expected to give a positive response, as they of course want the best property at the lowest price.

I'll be using my best efforts to work for you and to meet your needs. However, my services will likely be paid, not by you, but by sellers who have listed properties with other agents. While I'll share in the fee paid by a seller, my sole obligation will be to you. Does that type of arrangement sound reasonable to you?

Note: You are asking if it sounds reasonable and the response will likely be positive. It is implied that they are agreeing to an agency relationship.

I want you to be partners with me in meeting your needs. If you see a house that is for sale, a house you're interested in, or an internet listing that perks your interest, contact me and I'll get more information for you. If it seems promising, I'll arrange for you to see the property.

I would like to go over the agency representation that I think would best meet your needs.

You can then give your prospective buyer(s) copies of the exclusive-right-to-represent agreement and go through the agreement with them explaining the meaning of each paragraph. You should explain to the prospective buyers that by signing the agreement, they are not obligated to make any purchase and that in cases where the property is listed for sale with a broker, the seller would be the one paying your fee. By having them initial each page as you complete the agreement, signing it will be a natural act.

Listing a Short Sale

There may be owner listing situations that at first glance appear hopeless because the owner owes more than can be netted from a sale.

A saleable listing is still possible if you can convince a lender that it is in their best interest to agree to a **short sale** where the lender agrees to accept sale proceeds as settlement of the loan obligation. See Unit 7 for how to handle short-sale situations.

Before a lender will agree to this the lender has to be convinced that the borrower will otherwise default on the loan and that the listing price you are proposing is as good as they can expect in the market. If a lender gives approval for a short sale of 1-4 residential units, a deficiency judgment is not possible.

SUMMARY

A listing contract is an agency contract to sell or locate property.

A valid listing must be in writing and must meet the four requirements of any contract:

1. Competent parties
2. Lawful object
3. Proper offer and acceptance (mutual consent)
4. Consideration

There are six basic types of listings:

1. Open listing (nonexclusive)
2. Exclusive-authorization-and-right-to-sell listing
3. Exclusive-agency listing
4. Net listing
5. Option listing
6. Exclusive-right-to-represent listing

The real estate agent must understand every paragraph used in both the sale and buyer-listing forms to answer owners' and buyers' questions and properly meet owners' and buyers' needs.

The agent must prepare for the listing transaction. The first step is to obtain information about the property; the second step is to prepare the comparative market analysis; the third step is to drive by comparables to make certain that your comparables are truly comparable and that you have a good sense of value.

The listing presentation normally starts with going through the comparative market analysis. The seller should understand the validity of your information before you proceed further.

If the owners are not ready to list their property, go through your listing presentation material, using a narrative with your visuals. This material should answer two owners' questions, why list? and why you? This should lead you to a trial closing that is intended to gain an agreement to sign the listing. After a listing is signed, be certain to leave a copy along with copies of the Estimated Seller's Proceeds form and your comparative market analysis and agency disclosure information if not included in the listing form. Be certain the owners know when you will contact them again.

To obtain a buyer’s agency agreement you must prove your competency to locate property and the buyers must feel you fully understand their needs and are willing to work for them.

If a home is encumbered with a trust deed greater than the fair market value of the property, a listing is still possible if the lender will agree to a short sale. In a short sale the lender accepts the net sale proceeds as full settlement for their lien.

CLASS DISCUSSION TOPICS

1. Prepare a list of five possible objections that an owner might raise to signing a listing.
2. Be prepared to enact a classroom role-playing situation in which objections are raised by the owner. (Students might be called on to take the part of either the agent or the owner.)
3. Prepare a five-minute (maximum) presentation to a prospective buyer, showing why he or she should be represented under a signed buyer-listing agreement.
4. Role-play closing a listing with your instructor as the owner. Be prepared with more than one closing.
5. Special assignments (if indicated by instructor):
 - a. Using a form supplied by your instructor or one used in your area, complete an exclusive-authorization-and-right-to-sell agreement for the following:

<i>Property:</i>	Single-family residence, 217 W. Clark Lane, Fillmore, California, Ventura County
<i>Owners:</i>	Sam and Loretta Smyth
<i>Broker:</i>	(Name Yourself)
<i>Listing Period:</i>	Four months commencing this date
<i>Price:</i>	\$548,000
<i>Personal Property:</i>	Refrigerator, pool equipment, and fireplace accessories go with property
<i>Special Conditions:</i>	No lockbox or sign. Two-hour notice of all showings limited to 3–5 pm daily and 8 am until noon on weekends and holidays.
<i>Broker’s Compensation:</i>	Six percent of sale price. 90-day safety period for commissions to parties whom agent(s) negotiated with prior to expiration of listing and whose names were furnished to owner.

b. Using a form supplied by your instructor, complete an exclusive-right-to-represent agreement (buyer listing) for the following:

<i>Buyer:</i>	Henry and Sally Corleone
<i>Broker:</i>	(Name Yourself)
<i>Period of Authorization:</i>	Three months from this date
<i>Property:</i>	Single-story 3–4 BR home with 2½ baths, 3-car garage, fireplace, and golf course views in gated community
<i>Price:</i>	\$900,000 to \$1.2 million
<i>General Location:</i>	Palm Desert, Rancho Mirage, or Indian Wells, California
<i>Other:</i>	Spanish architecture preferred
<i>Compensation:</i>	3½% of acquiring price. If compensation is paid by another party, any excess shall be paid to broker. If within 60 days of termination buyer buys a property that broker introduced buyer to during life of this agreement, then buyer shall pay broker the compensation.
<i>Agency:</i>	This shall be a single agency only.

- Explain either a sales listing or buyer agency form, paragraph by paragraph, as if you were explaining it to a prospective seller or buyer.
- Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. A valid exclusive listing requires
 - a. a lawful purpose.
 - b. mutual consent.
 - c. consideration.
 - d. all of the above.
2. An agent sold a property where the owner had verbally agreed to pay a commission. The agent would be legally entitled to a commission from the owner for the sale if the agent had
 - a. relied on the verbal promise.
 - b. made a written memorandum of the agreement signed by the agent.
 - c. obtained a valid buyer listing agreement.
 - d. none of the above.
3. Which listing would you be *LEAST* likely to advertise?
 - a. Nonresidential property
 - b. An open listing
 - c. An exclusive-agency listing
 - d. An exclusive-right-to-sell listing
4. A listing under which the owner can sell the listed property without payment of a commission but the agent is nevertheless an exclusive agent is a(n)
 - a. open listing.
 - b. exclusive-right-to-sell listing.
 - c. exclusive-agency listing.
 - d. net listing.
5. An agent who did not obtain a purchase offer but who initiated an uninterrupted chain of events that led to a sale would be considered the
 - a. agent of record.
 - b. procuring cause
 - c. exclusive agent.
 - d. cooperating broker.
6. An exclusive-right-to-sell listing likely includes
 - a. an agency relationship disclosure.
 - b. an attorney fee provision.
 - c. an arbitration agreement.
 - d. all of the above.

7. All of the following statements regarding an exclusive-right-to-sell listing are true *EXCEPT*
 - a. escrow does not have to close for an agent to be entitled to a commission.
 - b. it must have a termination date for the agent to be able to collect a commission.
 - c. the agent must give the owner a copy of the listing when the owner signs.
 - d. the agent is precluded from working with other agents to sell the property.
8. The type of listing that has the greatest likelihood of resulting in a sale would be a(n)
 - a. open listing.
 - b. exclusive-agency listing.
 - c. exclusive-right-to-sell listing.
 - d. reduced-fee listing.
9. An owner tells you that Agent Jones told her she could get far more for her home than your CMA indicates. What is your *BEST* response?
 - a. "Many unethical agents will promise the moon to get listings and then fail to perform."
 - b. "I am willing to take the listing at that price, but if we don't attract buyers we will reevaluate the price."
 - c. "I don't believe it. No agent who knows the market would set a price that high."
 - d. "I think my comparative market analysis covers all recent comparables and clearly shows the market value. May I please look at the comparative market analysis that Agent Jones prepared for you?"
10. By taking a listing at a low fee that will result in a less than normal fee for any cooperating brokers, you are benefiting
 - a. your office.
 - b. a selling office.
 - c. the owner.
 - d. none of the above.

7

UNIT SEVEN



SERVICING THE LISTING

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- explain owner/agent communication;
- describe how to prepare a property for a sale;
- describe seller disclosures and explain how to modify or extend a listing;
- list the components of a marketing plan; and
- explain how to handle a short sale listing.

KEY TERMS

agent property	information boxes	security
evaluation	listing modification	short sale listing
broker open house	neighborhood	staging
caravan	information request	talking sign
communication	open house	virtual tour
Equator Platform	pocket listing	weekly activity report
homeowner instructions	property brief	

OWNER-AGENT COMMUNICATION

The reason most often cited by owners who have been unhappy with the agent who took the listing on their property is not the failure of the agent to secure a buyer; it is the failure of the agent to communicate with them after the listing is signed.

It's easy for owners to feel abandoned by their agents. There is a For Sale sign on the lawn and a listing on the internet. Occasionally, someone calls for an appointment, and people rush through the home in silence.

Owners want to know what is happening. Some agents even become hard to reach when owners want to know what is happening. The agent paved the way so smoothly in the presentation to get the listing, but now there seems to be a communication breakdown.

Owner discontent is usually based on the agent's failure to communicate with the client.

The problem in these cases may be that the agent failed to explain what would be happening in advance and doesn't want to tell an owner that very little is happening now. Sometimes, unprofessional agents make unrealistic promises to get listings and want to avoid the unpleasant task of telling the owners that they have not located buyers for their properties. When a listing expires, some agents don't even want to face the owners again to try for an extension.

What Will Be Happening

Owner-agent **communication** should start with the listing. Agents should inform owners what will be happening in the few days immediately following. Agents should make definite appointments to meet soon after a listing to discuss their marketing approaches.

Broker Introduction

Chances are the owners have never met your broker. Your broker should send a letter to the owners thanking them for entrusting the sale of their home to his or her firm. The letter should state that the listing agent is the owners' contact person with the firm but that if any problems arise, they should feel free to contact the broker.

Postlisting Meeting

The owner's cooperation can increase the likelihood of a sale.

You should consider a post-listing meeting with the owners soon after the listing was obtained. At the post-listing meeting, go through the house again and make recommendations to the owners of things they should do to help with marketing, called "staging," their home. Impress on the owners that marketing is really a team effort.

Homeowner instructions. Give the owners **homeowner instructions** to follow. (See Figure 7.1.) Go through the relevant portions of instructions with the owners. When you recognize that work needs to be done, advise the owners to do it or have it done. Show that it is in the owners' interest and not yours that the house appears at its best.

FIGURE 7.1: Instructions for Sellers**Homeowner Hints for a Successful Sale**

- I. Exterior
 - A. Grass and shrubs: Keep trimmed. Consider a fast-greening fertilizer such as ammonium sulfate (inexpensive) for a deep green lawn.
 - B. Pets: If you have a dog, clean up any dog dirt on a daily basis. If you have a cat, change your litter box daily. Secure pets when the house is being shown.
 - C. Fences: Make any needed repairs. A neat, well-painted fence gives a positive impression.
 - D. Flowers: Plant seasonal blooming flowers, especially near the front door and in any patio area. A profusion of color can have your home half-sold before the door is even opened.
 - E. Bird feeders: Hummingbird feeders and birdhouses create a pleasant mood, especially when they are close to any patio area.
 - F. Paint:
 1. Front door should be refinished or painted if it shows excessive wear.
 2. Check exterior paint. Often only the trim or, depending on sun exposure, only one or two sides of the house need painting. Keep in mind the fact that paint is cheap compared to the extra dollars a home with a clean fresh appearance will bring.
 - G. Lawn furniture: Place lawn furniture in an attractive, leisurely manner. A badminton net; croquet set-up or barbeque gives a positive image as well.
 - H. Roof: If the roof needs to be repaired or replaced, it's best to have the work done. Otherwise, buyers will want to deduct the cost even if your price already reflects the required work. Delaying repairs can actually cost you twice as much.
- II. Interior
 - A. Housekeeping: You are competing against model homes, so your home must look as much like a model as possible. Floors, bath fixtures, and appliances must be sparkling. Make beds early in the day. Unmade beds and late sleepers create a very negative image.
 - B. Odors and aromas: Avoid using vinegar or frying or cooking strong-smelling foods such as cabbage just before showing. The odors last and work against the image you are trying to create. On the other hand, some smells have a positive effect on people: Baked bread, apple pie, chocolate chip cookies, and cinnamon rolls are examples of foods that can help sell your home. Consider keeping packaged cookie or bread dough in the refrigerator. Just before a scheduled showing, the smell of these baking foods can be a great help to us. Garbage containers should be emptied regularly and cleaned. For exterior garbage cans, seal daily garbage in plastic bags to avoid odor.
 - C. Paint: If you have leftover paint, you can accomplish a great deal by touching up paint where needed. If the paint is dark, repaint with light colors such as off-white, oyster, light beige, or pale yellow. Light colors make rooms appear fresh as well as larger.
 - D. Plumbing: Repair any leaky faucets. Make certain you don't have a gurgling toilet or cracked toilet seat.
 - E. Shades and blinds: Replace any torn shades or broken blinds.
 - F. Drapes: If drapes need cleaning, have it done. If they are old and worn, stained or dark, consider replacing them with light colors. (Large department stores or catalog houses will have products that can solve the problem.) Vertical blinds might be considered as an alternative to drapes. They are less expensive than all but the cheapest drapes and have a clean, appearance.
 - G. Carpets: Dirty carpets should be either professionally steam cleaned (preferred), or you should rent a heavy-duty cleaner to do it yourself.
 - H. Lighting: If any room appears dark, increase the wattage of your light bulbs. Before a showing, open the blinds and drapes and turn on the lights, even during the day. You want the house as light as possible. Make certain your light fixtures and windows are clean.
 - I. Closets: If closets appear crowded, remove items not needed and put them in boxes. The boxes can then be stacked neatly in a corner of the basement, attic, or garage.
 - J. Too much furniture: Many houses appear crowded, with too many pieces of large furniture as well as bric-a-brac. Consider putting excess furniture in a rental storage unit.
 - K. Family photos and mementos: Put very personal items in drawers. While they are important to you, visitors must be able to visualize it as their house, not your house. Many prospects feel intrusive when they are among personal items of others.
 - L. Garage and basement: Spruce up your work area. Consider a garage sale to get rid of the excess items too good to throw away but of no use to you. Put excess items in boxes and stack them neatly in a corner. Consider using a commercial garage floor cleaner to remove excess oil and grease marks on the garage floor and driveway. You might consider a commercial steam cleaner (not carpet cleaner).

FIGURE 7.1: Instructions for Sellers (continued)

- M. Temperature: On cold days, a natural fire in the fireplace will help us sell your home. Start the fire before the showing is scheduled. On hot days, consider turning the air conditioner several degrees cooler than normal. The contrast will seem phenomenal, giving a very positive reaction. In moderate weather, open windows for fresh air.
- III. You
- When your home is shown, it's best that you disappear for a while. Buyers feel restrained with an owner present. If buyers will not voice their concerns, then their questions cannot be answered and their problems cannot be solved. Many buyers will feel they are intruding if you are present. Buyers then tend to spend less time in the property, which can reduce salability.
- If you must remain in the house, try to stay in one area. Excellent places to be are working in the garden, on the lawn, or in the workshop. These activities create a positive image. While soft music is fine, do not have a TV on.
- Never, never follow the agent around the house during the showing, volunteer any information, or answer questions the buyers may have. You have engaged professional real estate salespersons. We will ask you questions if necessary.
- [Clyde Realty] [555-8200] [www.CRE.com]

Besides cleaning and performing needed repairs, there could be a situation in which an improvement might increase property value in excess of the cost of the improvement. Should this be the case, inform the owners of this possibility. In the event they improve the property after it is listed, an adjustment in the list price should be considered.

It is not enough that owners understand what is expected of them, they should understand why. Owners must understand that their house is in competition with other homes for the same buyers. Therefore, they must do everything feasible to make their home a winner.

Some owners may want to meet prospective buyers and follow you around and volunteer information; after all, it is their home. While they have the right to do so, they should understand that being there could inhibit prospective buyers from freely voicing concerns. If a concern of a prospective buyer is not known to you, you can't overcome it. You must explain that like most people, buyers may not want to criticize because it could be taken personally by the owners. On the other hand, voicing a problem to you is really a sign of interest with a "but" attached. Getting rid of the "but" can turn that interest into a sale.

Explain to the owners that at times prospective buyers may come to their door. Owners should ask for the name of the prospect and call your office at once, so an agent can come to show them the home.

Figure 7.2, "When an Appointment Is Made to See Your Home," is taken from the Toolkit for Presentations and is reproduced with the permission of Realty Tools, Inc.

Security. You should advise owners to secure small expensive items when the home will be available to unsupervised visits by other agents. If the property has a security system, do not make the code readily available to all other agents. Listing agents often arrange to meet buyer agents and disarm the system. Many security systems allow remote monitoring where you can turn off and reset the system when an agent calls your office.

FIGURE 7.2: When an Appointment Is Made to See Your Home

When An Appointment Is Made

Agents from many real estate firms will want to show your home. Please allow any agent who calls to show your home at the suggested time. If you are not frequently available, it is suggested that you allow a lockbox to be installed on your door. You will increase your odds for a sale by allowing more qualified buyers to see your home. You do not want to miss an out-of-town transferee because your home was not able to be shown.

During a showing:

- Open all draperies and window shades during daylight hours.
- The kitchen & bathroom should sparkle.
- Open windows one half hour before showing to circulate fresh air.
- Open all the doors between rooms to give an inviting feeling.
- Place fresh flowers on kitchen table and/or in the living room.
- If possible, bake cookies or bread to add an inviting aroma.
- Turn on all lights and replace bulbs with high wattage bulbs where needed.
- Pets should be confined or restricted from view. Eliminate pet odors. Not everyone may share your love of animals. Some people may be allergic to them.
- All jewelry and small valuables should be stored in a safety deposit box or in a locked closet.
- Replace any items not included in the sale, or tag them appropriately with “to be replaced with...” or “not included” signs.
- Beds should be made & clothes picked up. Bathrooms should be clean, with towels folded and toilet lid down.
- When you leave the house, please leave it as if you know it is going to be shown. You never know when the right person is going to look at it!



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Do not turn off security systems without the owner's permission. While it makes showings easier, it creates great risks. In La Habra, California, an unoccupied furnished home listed on the market was trashed and looted by hundreds of teenagers led to the property by internet party invitations. The security system had been turned off.

Staging. As the sales market tightens, the need to have properties outshine competing properties is apparent. Owners are competing against other homeowners and even lenders and flippers. The advantage your owner can have is the ability to make their house look move-in ready.

Staging is preparing a house for a potential buyer, making the property seem attractive and desirable so the prospect envisions living there. It includes decorating, as well as furniture, accessories, and avoiding clutter.

Some agents give advice to owners as to repainting, landscape work, rearranging furniture, storing excess belongings, etc., however many agents lack the training and experience to be really effective.

There are professional stagers who will make a property look as if Martha Stewart lived there. Some will instruct the owner what to do for a few hundred dollars while others will do the entire job. They may just add accessories, remove clutter and use much of what the owner has. In some cases they will repaint, refinish floors, change cabinets, paint, re-landscape and completely furnish and accessorize the home with new rental furniture. The property, the market, as well as the owner's willingness to cooperate will determine the extent of the staging. Flippers have found that professionally staged homes sell more quickly than vacant homes and can mean greater profit because of both shorter holding times and higher sale prices. Coldwell Banker tracked 2772 home sales and found that based on list prices, staged homes sold for almost 5% higher price than unstaged homes and took half as long to sell. California does not require licensure to act as a stager.

WEB LINK

There are several organizations of home stagers: International Association of Home Staging Professionals at <https://iahsp.com> and Real Estate Staging Association at www.realestatestagingassociation.com.

Professional Property Inspection

You should inform your owners that your property inspection only covered defects that your reasonable visual inspection revealed, but that most sale contracts provide for the buyer being able to have access for a professional inspection.

Many sales agreements fall apart when defects are found. If corrections are necessary, usually it is the seller who agrees to the cost.

Explain that a better approach for an older home would be for the owner to have a professional inspection now so that there will be no surprises and any problems could be solved now. In addition, the professional inspection report could be a sales tool to help convince a buyer.

While some agents would rather make monthly reports simply because they show more activity, owners don't want to wait that long. Prepare reports on all of your listings every week so they become a part of your routine. Weekly reports also will force you to review your own sales activity and to consider what can or should be done to bring about a sale.

[Jones Realty]

Showings. Owners must understand that although agents try to give them notice well in advance of a showing, this may not always be practical. Explain that in showing another property, an agent might realize that the owners' property better fits the needs of a certain buyer than properties that originally were selected for viewing. At times, prospective buyers may ask agents about certain houses while looking at other properties. If a property fits a buyer's needs, the prospective buyer could well turn into an actual buyer. The fact that they, not the agent, found the property can influence a sale.

Also explain that the reverse can happen: owners might be prepared for a visit by an agent who fails to show. While you generally will notify owners of canceled appointments, there will be times when such notification is difficult.

During hot weather, suggest that the owner leave soft drinks in the refrigerator for agents from your office and their prospective buyers. Explain that offering prospects cold bottled water or a soda and getting them to sit down can help them view the home from a more relaxed point of view. If the owners agree to do this, and they generally will, make certain the agents within your office know about it. Some agents display their company label on bottled water. Besides stocking owners' refrigerators, they use the bottled water at their office and at open houses as a refreshing advertisement. Incidentally, a good place to sit is close to a pool or garden, if available. Otherwise, pick the room that has the best ambiance.

Advertising policy. You should explain that internet advertising has become the media of choice for most buyers. Classified ads for homes have all but vanished in most newspapers. Explain that buyers often buy a different house than the one that first attracted their attention.

Real estate brokers generally pay for institutional advertising and provide an office website. They usually post listings on multiple websites. Today, the individual agent might pay for photos, virtual tours, and other specific property or personal advertising in all media.

In the same vein, other homes priced in the same or even a higher or a lower price range create inquiries. When qualifying these prospective buyers, the agent may discover that the owners' house is likely to meet the buyers' needs.

The owner can be a source of valuable information.

Neighborhood information request. Another way in which you can make the owners feel they are part of your marketing effort is to ask them to complete a **neighborhood information request**. (See Figure 7.4.) This information can be extremely valuable, and filled-out copies should be readily available to all salespersons in your office. Agents who know what buyers want will have special ammunition to sell particular houses. Although other homes might have area activities or neighbors that would make them equally desirable, the agent who does not have the information cannot use it to make the sale. As an example:

Johnny, do you like baseball? Well, you're in luck, there is a Little League here, and they play just two blocks away at McKinley Park.

Knowing the architect. For distinctive homes, you should ask the owner if they know the name of the architect, being sure to verify this information before using it. Mentioning the architect's name to prospects can add a panache to the property. If the architect is well known, it can reflect in both the sales price and the time required to sell. You can Google the name of the architect and find important buildings/homes that the architect designed. This can be additional sales information. If the owner does not know the architect, you can check with city planning. The building permit records and/or plans on file should reveal the name of the architect.

FIGURE 7.4: Neighborhood Information Request

Neighborhood Information Request

Owner: _____

Address: _____

Having an in-depth knowledge of your neighborhood and neighbors can give us a competitive advantage over less informed sales agents who represent other properties.

We would therefore appreciate your completion of this form to the best of your ability.

1. Neighborhood features you feel a buyer would likely be most pleased with: _____

2. School districts are:

3. School bus stops at:

4. Youth activities in the area (Little League, junior hockey, soccer league, etc.):

5. Public recreational facilities in area (parks, pools, playgrounds, tennis courts, golf courses, etc.):

6. Hike and/or bike paths:

7. Nearest public transportation route:

8. Nearest medical facilities:

9. Nearest community center (for children, seniors, etc.):

10. Nearest churches and synagogues (and denominations):

11. Nearest shopping area:

12. Any pet-friendly facilities (dog park):

Please send your completed form to my attention in the enclosed postage paid envelope.

Your help in providing this data is greatly appreciated.

Appreciatively yours,

Change in Agents

If an agent who took a listing leaves the office, the broker should assign another salesperson to serve as listing agent and liaison with the owners. This agent should meet with the owners and go over their work to that point in time as well as to discuss ways the property can be made more readily salable (if applicable).

Preparing the owners for an offer. Give owners a blank copy of a purchase contract and explain to them that the form is the one that will be used by a buyer. By explaining the clauses and leaving a copy with the owners, you will reduce the chance that they will get upset about any clause when they receive an offer.

Also prepare owners for quick offers. Explain that the first few weeks after a listing is taken can be very productive because other agents as well as prospective buyers tend to get excited over new listings. You can point out that when some owners get a quick offer, they feel that it indicates they set their price too low when it actually means they priced their property right. They reject good offers, and they later regret the rejection. In pointing out this fact, you reduce the likelihood of a negative reaction to a quick offer.

NECESSARY INFORMATION AND DISCLOSURES

You want the sellers to complete the Real Estate Transfer Disclosure Statement (see Unit 3) as soon as possible so it can be given to a prospective buyer. If the owners reveal problems that you feel should be corrected before a sale, you should advise them to take corrective action.

If the property is leased, obtain copies of lease(s). You should also obtain estoppel certificates from tenant(s) that they have no defenses or offsets against the landlord.

If the property is a common interest development, you should obtain copies of the bylaws, CC&Rs, current financial statement, minutes of meetings, and any information about changes in assessments or pending legal actions. The CAR purchase contract is going to require that this information be provided to the buyers during their contingency periods.

You should have the sellers sign the Water Heater Statement of Compliance that the water heater will be properly braced as of close of escrow, as well as the Smoke Detector Statement of Compliance that operable smoke detectors shall be in place at close of escrow as required by law.

The Lead-based Paint and Lead-based Hazards Disclosure Acknowledgment and Addendum should also be signed by owners indicating knowledge of any lead-based paint, if the home was built prior to January 1, 1978.

You will want a property profile from a title company or through the public records module of the MLS. This could reveal problems that might make a sale difficult

or even impossible if not corrected, such as judgments, silent owners, liens, and so forth.

You will also want to know the lot size that may be available from plat maps. You should also obtain the Natural Hazards Disclosure report as soon as practical.

LISTING MODIFICATION (ADJUSTMENT)

If it becomes apparent that you made an error in your assessment of the property value or changed conditions have affected the market, let the owners know at once. If you suggest a different price, be able to defend your position. When you suggest lowering the price, you are, in effect, asking the owners to give up something they think they have. *Modification* or *adjustment* does not have the immediate negative connotation of *lowering*.

If owners refuse to adjust their price when you feel such an action is necessary to find a buyer, consider the ultimate in persuasion: offer to return the listing. Ask the owners to sign a release relieving you of all agency obligations under the listing. Ask to be let out of your agreement to exercise diligence on their behalf. Although owners might not really be sold on your representing them, no one likes to be the one rejected. A release offer often convinces owners to adjust their price to the level recommended.

The worst-case scenario is that you will give up an overpriced listing that had less than a good chance of attracting buyers. From a rational point of view, of course, giving up a poor listing makes sense, but you may feel that if you don't succeed, you are a loser. You actually will be a winner, because you will be able to devote your time to probabilities rather than remote possibilities. You do not have to take or retain overpriced listings.

Don't look at this approach as a bluff, because you shouldn't be bluffing. To be sure, it's an either/or approach, but it's unfair to the owners to continue to offer their home at a price that will fail to attract prospective buyers.

Don't change the original listing when making a listing adjustment. Use a modification form or separate signed and dated letter that will enable you to later determine what was done should a problem arise.

A significant downward price adjustment on a listing should be communicated to local area cooperating brokers and salespersons by email. It will get more attention than an MLS computer update by itself. You should update all internet presentations.

LISTING EXTENSION

Several weeks before your listing expires, schedule a meeting with the owners to go over the listing and what you have been doing on their behalf. If the owners feel that you have been diligent in working for them and have kept them informed, you have an excellent chance of obtaining a listing extension. However, if you fail to keep the owners informed and they have to call you to find

out what is happening, your chances of obtaining an extension to the listing are materially diminished.

If you obtain an extension, a thank-you letter from your broker is appropriate. Also, don't forget to immediately communicate the extension to your MLS.

If the owners do not wish to extend the listing, supply the names of people who viewed the property. This must be in writing to protect your firm from the owner making a sale to one of these prospects during the safety period.

YOUR MARKETING PLAN

You should have a marketing plan. By following the suggestions in this section, you will see a marketing plan develop. A copy should be provided to the owners as soon as it is prepared. See Figure 7.1: Presentation Samples for a sample plan.

Signs

When you obtain the listing, put up a For Sale sign immediately after leaving the house. If you do not, you should tell the owner when one will be installed. If your office uses huge wooden holders for large signs, you should have smaller lawn signs that can be used in the interim. Tell the owners when your large sign will be installed.

Besides the broker's name and telephone number, some brokers include their website addresses so that prospective buyers can obtain more information right away on their own.

Rider strips. A rider strip can emphasize a desirable feature not evident from the exterior, such as "Pool and Spa," "5 Bedrooms," "Home Theater," etc. See Figure 7.6.

FIGURE 7.5: Rider Strip Example



Information Boxes

All of the real estate supply houses as well as some REALTOR® board or association office stores carry **information boxes** or tubes that can be attached to your yard signs. These boxes are a low-cost, effective way to interest buyers. Inside the box, insert a supply of property information sheets (briefs) that describe the listed

property in a manner that is likely to interest the prospective buyer and encourage them to contact your office. Information boxes can also include information on similar properties and the broker's internet address where more information is available.

Photos

Quality photographs of the home should be taken as soon as possible after the listing is taken. You want interior photos emphasizing desirable aspects of the home as well as exterior photos. You want the photos for property magazines, property briefs, ads, mailings, and displays as well as for internet sites. Photos also have to be taken for virtual tours.

Many firms produce a professional virtual tour of a property as well as of the area. Some firms also use drones to obtain a bird's-eye view of a property.

Lockbox

If possible, install a *lockbox*, or *keybox*, used by your MLS right after taking the listing. If there is going to be a delay, inform the owners when a lockbox will be installed. Lockboxes are simply large boxes that have a separately locked compartment to hold the house keys. They may be locked to door handles, electric meters, metal railings, etc.

The latest lockbox models are electronic marvels. Besides containing the key, they tell you by a simple phone call who has used the lockbox, including date and time. This information is valuable for security reasons. Electronic lockboxes can even monitor the status of the lockbox battery and restrict access to preselected agents or grant access to agents from other real estate organizations. It also lets you tell the owner in your weekly activity report who entered the property by using the lockbox. You can also call agents who viewed the property for their comments. The agent can access the lockbox data online. This is the type of information an owner should be made aware of. Like the talking sign, these electronic lockboxes are a superb marketing tool that can be effectively used in your listing presentation.

Owners should understand that allowing other people access to their homes when they or you are not present does create a security risk. You should suggest that they make certain that their insurance will adequately cover theft or mysterious disappearances of furnishings. You might also suggest that expensive objects be locked up or removed from the premises.

The Multiple Listing Service

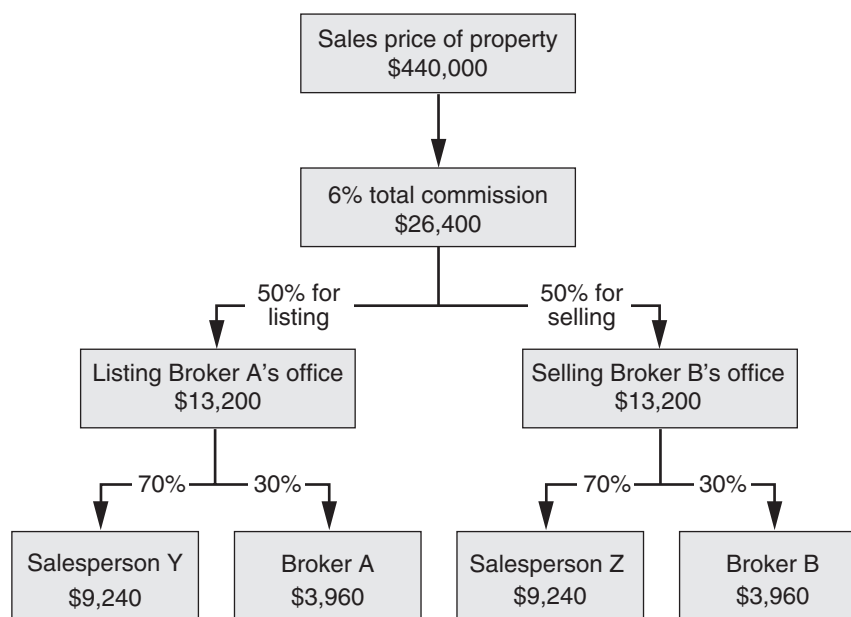
To provide greater market coverage for their listings, a group of brokers often conducts a cooperative area listing service, or MLS. The group usually consists of members of a local real estate board or association; however, membership in the board or association is not a prerequisite to membership in the service. The MLS is used most often with an exclusive-authorization-and-right-to-sell listing, but

it may be used with other listings as well. A member of the group who takes any listing turns it in to a central bureau that distributes it to all participants in the service, usually on the internet. All members have the right to sell the property; however, they must have the listing broker's permission to advertise or promote it. When a sale is made on an MLS listing, the listing broker and the broker who found the buyer share the commission.

Suppose, for example, an MLS commission split was 50/50. The listing broker would get 50% of the commission, and the broker who found the buyer would get the other 50%. Within each agency the broker would, according to the contractual agreement between the broker and the salesperson, also split his or her share of the commission with the salesperson who had actual contact with the seller or buyer. (Only brokers can receive commissions, but they may share them with the salespeople who work with them.) Figure 7.6 illustrates a possible split of the 6% commission on a property that sold for \$440,000 based on a 50/50 split between offices and a 70/30 split to the salesperson and broker.

Commission splits will vary among offices, often based upon broker services as well as the market. As an example, when there are many buyers and few sellers the listing commission could be greater than the sales commission.

FIGURE 7.6: Splitting a Commission on an MLS Listing



It is important that owners fully understand the role of an MLS service and the agency implications.

If, for any reason, a broker does not submit a listing to the MLS service and precludes other agents from showing the property, it would be considered a **pocket listing**. Refusing cooperation would generally not be in the best interests of the principal and could be a breach of the agent's fiduciary duty as well as MLS rules.

A new listing should be placed on your office website, as well as the other Internet sites that you use, as soon as possible. A printout of the material included on the site should be provided to the owner(s). (For information about what your website should include, see Unit 8.)

Your Website

While other websites might have restrictions, you are not under constraint as to your own office website. You can offer your own format and more data with multiple photos, virtual tours and even videos. A drone's birds-eye view can be an effective means to show the house in its environment as well as focus on area amenities. Drones can produce exceptional videos. Cost for these professionally produced videos has decreased so that they are not limited to the upper end of the price spectrum. Some offices take their own drone pictures. To operate a drone for commercial purposes the operator must

- pass an aeronautical knowledge test or
- hold a pilot certificate and have completed a flight review within 24 months prior to certification.

Property Brief (Information Sheet)


As soon as you have your photographs, prepare a property brief. A **property brief** is simply a one-page flyer about the property pointing out attractive features. It must have a photograph or drawing of the home. If the owners purchased the property from a developer, there is a good chance they have kept the original sales material; check it over if they do have it. There could be an attractive pen-and-ink drawing of the house that would reproduce well for your property brief. If there is a floor plan, it may be possible to reproduce this on the back of the property brief along with some information on special features.

A professional-quality property brief can be prepared in a few minutes with a laser printer and any number of available desktop publishing software programs. Owners will be impressed with a quality flyer featuring their home so soon after you have taken the listing. (See Figure 7.7.)



FIGURE 7.7: Example of a Property Brief


Currently On The Market

2 Symphony Cir
List Price: \$789,000




Description
*Gorgeous home available for move in immediately! Inground Pool in back of house, Fabulous Master Bedroom, Spacious Rooms.**



Angela McKendrick, CRS, GRI
Office: 410-555-1234
Home Office: 410-432-7890
Fax: 410-555-5607
Web Site: www.demorealty.com/angela
Email: angela.mckendrick@demorealty.com






Green Leaf Realty
www.greenleafrealty.com




Additional Photos

2 Symphony Cir
List Price: \$789,000













Angela McKendrick, CRS, GRI
Office: 410-555-1234
Home Office: 410-432-7890
Fax: 410-555-5607
Web Site: www.demorealty.com/angela
Email: angela.mckendrick@demorealty.com



Green Leaf Realty
www.greenleafrealty.com

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A property brief is an advertising flyer about a particular property.

The backside of this particular property brief provides additional photos.

The property briefs should include an internet address where the prospect can obtain further information including additional photos on the property as well as other properties.

For your listings, you want the property brief to indicate your name, the broker's name, license, identification number, cellphone number, email address, personal website, etc. You want to be contacted.

Copies of the property brief should be left at the home to be given to prospects as well as agents who will view the property. Therefore, deliver the property briefs to the home before any visits take place. They should be placed close to the front door, preferably on a table, so that a visitor will not miss them. A small "Take One" sign can be used. If the For Sale sign has an information box, a good supply should be placed inside it. Give a supply of property briefs to every agent in your office. You might also give them to agents from other offices who are particularly active in the area or in the type of property you are offering. Be sure to check the information box on your For Sale sign whenever you visit the property to see whether the property briefs need to be replenished.

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Property briefs also are given out at open houses. It is a good idea to have a supply of property briefs on similar homes as well as briefs on the home that is open. Briefs may also be sent in response to mail, phone or internet inquiries either electronically or by hard copy.

Other Internet Sites

WEB LINK



The National Association of REALTORS® has a website, www.realtor.com, where a prospective buyer or tenant can find properties in all areas of the country. The site allows a broker to post a picture of the property as well as a great deal of information to interest prospective buyers. The viewer has access to further information and a blowup picture of the property on request. In addition, a number of boards of REALTORS® and groups of boards have area websites. The appendix includes a list of some of the many internet sites that are available.

You will be limited to what you place on sites that you don't control. You want a good exterior photo as you will likely be allowed to place only one on the website. The information you provide will likely have to be in a specific format. You should carefully choose descriptive wording on your own website. Multiple-broker sites often limit your descriptions.

If you prepare a video of a listing, it could be used on YouTube and other sites featuring videos.

For an additional fee you can get special enhanced coverage for your property on many of the property websites. Realtor.com offers Showcase treatment that can include an agent's photograph and contact information, a yellow banner of search results page, ability to add up to 25 jumbo photos, full motion video and virtual tours, open house alerts, custom headings and descriptions and exposure for up to three additional listings. Your use of showcase treatment will be well received by the owners. It can also be an excellent listing tool.

Virtual Home Tours

Technology has evolved so that it is possible to offer virtual home tours while seated before a personal computer. Providing virtual home tours on the internet impresses owners of listed properties and saves buyers' and agents' time. A viewer can move from side to side, backward and forward, and from room to room when viewing the site. A specially trained photographer might take 360-degree photographs of the interior, exterior, and even the neighborhood. Today, software programs are available that allow an agent to prepare a virtual tour using a plain digital camera; such a software program costs around \$300. If you are interested in creating your own virtual home tour, you might wish to consider www.paradym.com. Two of the larger suppliers of virtual tour video programs are Matterport and Glide Tour. Matterport uses 3D cameras coupled with its software. Glide Tour uses gliding internet coupled with a professional soundtrack. Homes & Land will prepare a virtual tour for you from six or more photos; however, you must advertise in its home magazine. Its website is www.homesandland.com.

WEB LINK



Having virtual tours on your website is an excellent marketing tool for both selling properties and obtaining listings. Statistics indicate that the presence of a virtual tour will more than double the number of online visits for a property.

Before you prepare a virtual tour for the internet, obtain the owner's permission in writing to do so. There is a danger that the virtual tour will provide access information to persons interested in what is in the house and not the house itself. A virtual tour could be a home shopping site for a burglar. Visitors to the home are usually prequalified or register. This is not true of a person who can view the contents on a computer. Owners should be advised to review their insurance coverage, especially if the home contains valuable art objects and/or antiques.

Brokers find that with virtual tours, they can show a home when it is not available for a physical showing. Virtual tours will likely replace the flat photographs currently used on most websites. Most house hunter sites now offer virtual tours. While virtual tours consist of a number of shots taken from the same point to provide an unbroken panorama, a video tour is a movie using a video camera that provides images as though touring the property. The terms are often used interchangeably.

YouTube sites are now being used for video home tours by many agents. A number of programs are available to make professional quality real estate video tours designed to excite buyers to want more information. If prospective buyers are offered a choice between still photographs and a video of a property, they will usually choose the video. Video tours may also be used on your firm's website.

Advertising

After you have given the listing to your MLS, prepared a property brief, and posted the property information and photograph on the internet, also prepare an open-house ad. Take your time because you want your presentation to have maximum effectiveness. If you are preparing print ads, a number of excellent books can help you produce superior ads. Using different approaches, your ad can be tailored to appeal to various groups of readers, based on features advertised and the form of your appeal.

Consider ads for home magazines, area throwaway papers, newspaper real estate supplements, and classified sections. By having ads ready, the likelihood of its being used has measurably increased.

Be sure to send owners copies of the ads on their property when it is advertised. Keep in mind that advertising does not sell property—salespersons sell. What advertising does is to create responses that professional agents can convert into sales.

Office Caravans

The owners should be told in advance about the office caravan and the MLS caravan. Many offices **caravan** their office listings. The name *caravan* comes from the

long lines of cars that agents drive from home to home to view properties. Have all the salespeople fill out an agent questionnaire after they walk through the property. (See Figure 7.8.) The information from this **agent property evaluation** questionnaire should be supplied to the owners with your suggestions. If the agent property evaluation indicates a serious problem, meet with the owners as soon as possible to decide how to resolve it.

FIGURE 7.8: Agent Property Evaluation

Agent Property Evaluation

Property Address _____

1. Features of this house that will be most appealing to buyers: _____

2. Features or lack of features that buyers are likely to view as a negative: _____

3. I feel that the price is:

☐ Too high
 ☐ Too low
 ☐ Realistic

 By how much? \$ _____
 Why? _____

4. To increase salability, the owner should consider: _____

MLS Caravan

Most MLS services have weekly caravans to show their new listings. Large real estate MLSs have many more listings than the agents could possibly visit in one morning or even in one day. However, the listings may be broken down into areas. Most agents want to see only the homes at the price and in the area where they feel they are most likely to have prospective buyers. Again, the effective agent concentrates more on probabilities than on possibilities.

Give the owners as much advance notice as you can about the caravan. The owners should have the property “standing tall (in show condition) for inspection.” The following are some general rules for caravans:

- Owners should not be at home. Agents tend to spend more time in a home when owners are not present.
- Offer agents hot coffee or lemonade, depending on the weather. Fill the cups or glasses about two-thirds full, so the agents can carry them while they view the home. This will tend to slow the viewing process.

Concentrate your viewing time on properties you're most likely to sell.

- Give each agent a property brief. The agents see so many homes that most will not remember which features went with which house.
- Consider mood setting. Have the stereo playing soft music. If the weather is cold, have the fireplace going; if it is hot, set the air-conditioning between 68° and 70° so it feels like a cold blast when agents enter the house.
- Ask the owner to bake some chocolate chip cookies, cinnamon rolls, or fresh bread. The aroma will be pleasant, and agents will like something to eat.
- Be at the house or have an assistant present during the caravan.

During slow markets, some agents put out a buffet lunch for caravan members. In a large MLS, instead of having only 15% of the agents visit the property, you may increase it to 60% or more of the agents on caravan by providing them food.

Some agents use the internet to view properties rather than go on caravans. It lacks the ambiance as well as physical presence.

Area Canvass Letter

Within one week of taking a new listing, you should send a letter to residents living within at least one block of the listed property. This letter informs the neighbors of the listing and asks their help in locating a buyer. (See Figure 7.9.)

FIGURE 7.9: Canvass Letter

[Date]

Dear []:

Our office has recently listed the home of a neighbor at [322 Maple Lane] for sale. You have probably noticed our For Sale sign.

I am writing to ask for your help in locating a buyer for this fine home.

I have enclosed a descriptive sheet on the property. We think it is a lot of house for the money, and the neighborhood is great so you would be helping anyone you suggest. If you can come up with any suggestions about your friends who might also want to be your neighbors, I would appreciate hearing from you.

Sincerely,

[Note: Be certain to include a property flier and your card and then follow through by phone.]

Check the Files

As soon as you get a new listing in an office, all salespersons in the office should go through their prospect files to try to match their current prospects with the new listing. This activity has two major advantages:

1. Prospective buyers tend to get excited over brand-new listings. They might treat property on the market for a long period of time as shopworn merchandise, but a new listing elicits interest and can also have a sense of urgency. They are seeing this property before it is being visited by perhaps hundreds of agents, all of whom have prospective buyers. Right now the property can be theirs if they wish. This is one of the reasons that the most productive period for sales tends to be the first 20 days after the listing is taken.
2. The second advantage of immediately calling prospects is that it creates traffic within a few days of taking the listing. The owners' impression of you as a professional and of your firm is likely to be set within the first few weeks of the agency. After that period, it will be difficult to change the owners' perception.

Some brokers make the consideration of new listings part of their weekly meetings. The broker asks agents to think about their prospects and who likely would be interested in the property. By directing thoughts toward solving a problem, agents frequently generate ideas they would not have had otherwise.

Broker Open House

If you have an unusual property, a property that must be sold or several identical properties close to each other, consider a **broker open house**. In large associations, agents can't physically visit every new listing. They have to pick and choose. Therefore, a great many agents could miss your home on a caravan because they only visited, say, 12 of 35 new listings. Even listings that were visited were only viewed for a few minutes, and if you asked an agent a week later which home had which feature, most agents would give you a wrong answer.

Because of the longer period of time spent at a property, an agent open house impresses on agents the details of that property. The offer to stop by for food and drink can bring in many agents. It also serves a dual purpose because owners like these events; it shows extraordinary marketing.

Broker open houses provide maximum exposure of new listings to agents, whereas the MLS caravan only allows quick viewing of a small portion.

Agents like broker open houses because they provide an opportunity to network with other agents. In some communities, broker open houses are scheduled for a particular day of the week so agents can plan ahead to attend.

Although you may have balloons, flags, and other accoutrements outside, you don't have to host an elaborate party to attract agents. Cheese, crackers, and nuts will do. Wine or champagne should be served in plastic glasses. One way to encourage

agents to linger awhile is a drawing using agents' business cards. The prize could be anything from a book of 10 free car washes to a weekend vacation package.

If you have the cards of the agents who were there, you can get them to complete a questionnaire giving their views on the property location and price, as well as letting you know whether they are working with any potential buyers.

Open House

Having an open house on an overpriced property will generally be a waste of both time and money. In addition, it will leave viewers with a negative feeling toward you and your firm. Therefore, you want open houses that are priced competitively. Best results can be expected from fresh property (recently listed).

Owners must be encouraged to have the house as presentable as possible for a standard **open house**. Treat the buyer open house as you treated homes for caravans and broker open houses. You want the home to appear light, bright, and as fresh as possible. There is one exception to having the house as close to perfect as is possible. That is an open house for a property advertised as a fixer-upper. If this is the case, the home will need more than minor repairs or touch-ups, although it should be clean.

If you are able to, greet the parties at the door and introduce yourself as you extend your hand. The normal reaction will be to give you their name. Use the prospects' names when answering or asking questions. Use the sales skills of Unit 10; don't be passive.

By asking each visitor to fill out a registration card or guest book, you can find out why they came and if they are buyers or sellers. Instead of registration cards, some agents give visitors clipboards with attached pencils, asking them to rate the house as to how it fits their needs. Figure 7.10 is an example of such a form. Of course, the comments from visitors should be relayed to your owners in their weekly activity report.

FIGURE 7.10: Visitor Rating Form

Visitor Rating

Property _____

Your name _____ Phone _____

Address _____ E-mail _____

Date _____

I am visiting this open house because of ☐ Advertising ☐ Signs

Other (specify): _____

Features I particularly like: _____

Features I do not like: _____

I believe the price quoted is: ☐ Low ☐ About right ☐ High

My reason for visiting is: _____

Do you presently own your home? _____ Is it currently for sale? _____

General comments: _____

☐ I would like to receive e-mails, with pictures, or new listings and other open houses.

☐ You may call me about future new listings.

_____ (Signature)

Many real estate agents today are relying on iPad or other tablet sign-in sheets for their open houses instead of traditional paper sign in sheets. Some visitors might be hesitant to sign in on a physical sign in sheet but today's consumer is quite accustomed to entering electronic information.

Various apps designed to manage open house leads are available. Many agents are reporting that the consumers are not pushing back at all on these electronic sign-in sheets.

Also, having the consumer information already in a database allows the agent to easily follow up on these leads with emails and phone calls without having to manually move the data into another system.

By offering the viewer notification of new listings, you can obtain email addresses, as well as permission to make phone calls even if they are on the do-not-call registry.

Draw Attention to the Property

Besides ads, you should have signs and arrows directing traffic from major streets. Always ask other property owners if you can put a directional sign on their lawns. They will generally allow you to do so, but if you do not ask, the sign likely will be removed.

Some agents tie a group of balloons to a mailbox or tree to attract attention. This is fine, as are flags, banners, helium balloons, and so forth. Feather flags are particularly effective in gaining attention. A feather flag is a relatively narrow cloth flag on a vertical pole. Sizes range from 8 feet to around 15 feet in height and from 2 to 4 feet wide. This vertical flag is read from top to bottom. Keep it simple with just Open House in large print. The thin material vibrates with just the slightest breeze and is readily readable. A number of flag companies keep Open House feather flags in stock. One Los Angeles-area broker uses a machine to spew out thousands of large soap bubbles. Another agent flies a 20-foot helium-filled blimp lettered "Open House." Some developments prohibit open house signs and limit For Sale signs as to size and color. By parking an "Open House mobile" or car parked in the driveway with Open House magnetic signs on the sides, you can generally get around these restrictions. Anything to make the house stand out can be used. You don't want to keep an open house a secret. Invite neighbors, as well as prospective buyers you are working with who have not seen the house. You want to generate traffic.

Give every open-house visitor a copy of your property brief and your business card. Property briefs of other homes you have in the same and lower-price brackets also should be available. By questioning visitors, you can find their interests and needs, and you may excite their interest in a property better suited to them. For this reason, it is absolutely critical to be fully aware of any properties that might better suit a prospective buyer's needs.

Open houses are a time to make contacts and gather information, so ask questions. You can use general qualifying questions and determine specific interests. If visitors seem enthusiastic, use a trial closing. Don't think the sole function of an open house is only to show; it is to sell as well. Open houses tend to please owners because they show positive action on your part. They are often a source of listings because many visitors must sell before they can buy. They are a source of prospective buyers for other properties as well as the property shown. Therefore, you should look at the whole picture. With every visitor, ask yourself, "How can I fulfill this person's real estate needs?"

Open houses provide a variety of benefits.

When you have or your office has several open houses in the same general area and price range, each open house should have a property brief of the other open house(s) and maps showing how to get to each property.

Some brokers advertise an open-house "Lotto," where a visitor to one house gets a card and a sticker. Another sticker is given at each additional home visited. If all the homes are visited, the visitor is awarded a gift.

It is possible for a single agent to conduct several open houses in a single day. For optimum effect, the homes should be in close proximity and should likely appeal to the same house hunters. The open houses should have staggered times such as 12 to 2 pm and 2:15 to 4 pm.

A variation of the above is an open house caravan where visiting time is relatively short, such as 15 minutes, and the caravan proceeds to the next home. Viewers should also be given clear directions to each home. Again, the homes should all appeal to the same potential buyers.

When a property has been extensively remodeled, neighbors will want to see what has been accomplished. An open house where neighbors have been specially invited can be beneficial not for a sale to the neighbors but for friends of the neighbors who might be interested in a home in the area.

By visiting owner open houses where the property is advertised as completely remodeled, the seller is likely a “flipper.” The owner/seller is likely to be a buyer of similar property in the future.

Facebook Marketing

In this unit, we talk about the marketing plan associated with taking a new listing. Once a listing is taken most real estate agents will do the standard marketing plan consisting of placing a sign on the property, putting it in the MLS and doing some light direct mail. However, the real estate licensee should also have a social media strategy in place.

The unique aspect of Facebook advertising is that Facebook has a database of unique information on users. We consider what our interests are, where we are at any given time, and who our friends are. This allows marketing to be extremely targeted.

For example, imagine that you have a listing in a given city on a home that has a wine cellar. You could take a picture of the wine cellar and create a Facebook ad around this image. Facebook allows you to target your audience based on interests, gender, age, and other demographic criteria. An agent could target users who live within 15 miles of the listing, are 35 and older, and have indicated interests in “wine,” “chardonnay,” or other relevant search terms relating to wine.

The thought behind this isn’t so much that you are going to find a buyer immediately but that the picture of the wine cellar and your listing will get “liked” and “shared” across the internet and may end up ultimately catching the eye of an interested buyer.

Servicing Buyer Agency Agreements

While keeping in touch with buyers is usually not a problem, prospective buyers you were unsuccessful in helping should not be forgotten, even if you don’t have an agency agreement with them. It is a good idea to send emails or letters at least once a week on new listings. Provide website information for viewing or send property briefs. At least every two weeks you should contact the prospects by phone and ask for their comments about properties presented. If positive, set up a showing. It is not uncommon for some buyers to spend months looking for a home. While this is often the fault of the salespersons, some people are just procrastinators when it comes to a final decision. When you have determined that the buyers are ready, willing, and able to buy, keep working and help them decide.

SHORT SALE LISTINGS

Homes purchased when prices were higher might be underwater in that their loan indebtedness could exceed market value. In such cases, sellers would actually have to come up with cash to sell their homes. Most of the time, they are unable to do so. A solution is a **short sale listing** in which the lender agrees to accept the net receipts of the sale as a discharge of borrowers' obligations. The advantage to lenders is that they save the time and money a foreclosure would require, do not have to secure the property, and would not be subject to holding costs or the expense of repair and sales expenses. In most cases, a short sale would be an advantage to the lender over foreclosure.

WEB LINK



In some instances where there is private mortgage insurance, the lender may want to foreclose and go against the insurer for their loss. Many major lenders use Equator Platform as a standardized short sale system. Agents log in at www.equator.com/home and click on "Initiate Short Sale." They indicate the lender or the loan servicer and provide the loan number. The agent then completes the short sale application by following the lender's instructions.

Where the Equator Platform is not used, your first step in a short sale should be to contact the lender's loan mitigation officer. Different lenders have different titles. It may take a number of calls to contact the right party. You should tell the officer what you plan to do and indicate you will be sending a package explaining that a short sale is planned. Your package will include the following:

- Comparative market analysis showing all recent comparable sales in the area for three months
- A hardship letter from the owners (letter should show why a sale is needed and why the loan terms cannot be honored [e.g., physical problems and expenses, loss of job, reduced income, job relocation, etc.]) If the homeowner is not in default and there is not a genuine hardship, short sale approval is unlikely.
- Financial statement showing assets and liabilities of the owners
- Copies of bank statements (checking and savings) for past three months
- Credit card statements for past three months
- Estimated lender's net based on list price
- Copy of sale listing

You should ask the loan mitigation officer if there is anything else you should send.

The same package should be sent to the lender when an offer is received, along with the purchase offer and the borrower's prequalification for a loan. While some lenders claim a *fast track* on short sale approvals, a wait of two to four months, and sometimes much longer, is not unusual.

A shorter approval is more likely if the offer is void of contingencies and the earnest money is substantial. If subject to professional inspection, the period for inspection should be very short.

Some buyer's agents recommend a statement in bold print in their offer that says, "Buyer will pay all closing costs and fees." They believe such a statement will increase the likelihood of a fast approval.

Buyers will sometimes offer several thousand dollars above the broker's advertised price to protect against another agent's submitting a full price offer on the property.

Normally, when a debt is forgiven, the debtor's forgiven obligation is taxed as income. The Mortgage Forgiveness Debt Relief Act removes federal tax liability on such debts. The act was extended and has now expired, but further extension is likely. California has a similar act that expired but may be extended.

THE OFFER AND BEYOND

Servicing the listing actually includes your communication and efforts from the time you obtain an offer to purchase until close of escrow. This aspect of servicing the listing is included in Unit 11, "From Offer to Closing."

SUMMARY

In this unit, you learned that honest and complete agent-owner communication, even when the communication is not good news, is better than a breakdown in communication. Owners want and deserve to know what is happening.

Owner-agent communications start with the listing. Owners should know when they will be seeing you again and why. The purpose of your next visit probably will be a postlisting meeting, when you will inform owners what you will be doing, including your marketing plan, and what you expect of them.

The owners should understand the instructions given them and the reasons for those instructions. Owners who do not understand why an instruction is given and that it is given for their best interests are not likely to follow the instruction.

The owners should understand that they will be receiving weekly activity reports about what is happening. Let owners know that if they have any questions or suggestions, they can contact you.

Owners who understand the showing procedure will realize the need to be prepared for showings at short notice.

Owners should realize that when print ads are used to advertise other houses as well, agents are bringing in calls about a wide range of properties. After buyers are qualified, it often is the case that another house better meets their needs than the one they inquired about.

Obtaining neighborhood information from the owners furnishes your office with the special ammunition necessary to give prospective buyers that last little nudge that results in a sale. Knowledge about the neighbors, similar interests, ages of children, and even employment can make a home more desirable to buyers.

Should an agent leave an office, the broker should immediately notify the owners of the departed agent's listings and establish a new contact person to meet with the owners as soon as possible.

The owner should complete the Transfer Disclosure Statement as soon as possible. All owner certificates and disclosures should be signed.

If a listing needs to be modified for any reason, let the owners know and meet with them. If you made a mistake in pricing, admit it and show the owners what it should be. If conditions have changed since the owners gave their listing, show them the changes along with your recommendations.

If you feel a modification is necessary in order to find buyers, and the owners will not accept the modification, ask to be relieved of the listing. This powerful approach will often serve to convince owners to accept your recommendations. If you do give back the listing, chances are you got rid of a liability, not an asset.

Go to owners for an extension before a listing expires. Review what you have done for them. If you have used diligent effort on behalf of the owners and have communicated with them, you will have a good chance of obtaining an extension.

The owners should understand your marketing plan, a plan that likely begins with a For Sale sign. A rider strip showing your cell phone number can give you additional calls. A rider strip for a particularly desirable feature, such as four bedrooms, will increase the sign's effectiveness.

Talking signs are radio transmitters. The sign outside directs people to tune to an AM or FM station number. The signs, usually the property of the listing agent, are an excellent listing tool.

A number of information boxes are available that can be attached to For Sale signs. They are used to hold brochures or property briefs on the property being sold. They are an effective tool to interest prospective buyers.

The lockbox, if appropriate, should be attached as soon as possible after the listing is taken. New electronic lockboxes can provide you with information about all persons who used the lockbox.

Take photographs of the property listed as soon as the proper light is available. They will be needed for the MLS, property briefs, office display boards, window displays, and internet presentations.

Post the property on your internet site, as well as on other sites, as soon as possible. If you prepare a virtual tour, take proper pictures of the property.

Get the listing information to your MLS as soon as possible. Prepare a property brief within a day or two of taking a listing. Also prepare advertisements for placement.

Prepare owners for the office caravan, showing the property to agents from your office. Ask agents to complete an agent property evaluation so you can provide

the owners with the reactions of other professionals. The owners should also be prepared for an MLS caravan of agents from other offices. If possible, the listing agent should be at the property during the caravan period.

Immediate interest in the listing can be obtained by direct mail or direct contact with neighbors, asking them for help in finding a buyer, and by all agents going through their files for likely buyers.

An agent open house is another way to bring agents into the property. If you offer food and drinks at the end of the day, many agents will come to these open houses.

Regular open houses must be prepared for in the same manner as a caravan showing. The open house can serve as a source of listings and a source of buyers for other properties, as well as for the open-house property.

If the mortgage amount exceeds fair market value, notify the lender's loan mitigation officer as to a short sale.

Servicing the listing extends all the way until close of escrow. It is a process whereby you make a plan, work your plan, and communicate.

CLASS DISCUSSION TOPICS

1. Prepare a marketing plan with dates from the listing for a single-family home. (Use the following assumptions: The owner is highly motivated to sell, and the property is listed at a price below those of most comparable properties; however, there have been few recent sales in the area.)
2. Prepare a property brief for a specific property.
3. Visit one open house held by another office. Discuss how it was held and what suggestions you would make for the agent (if any).
4. Discuss any property you know of that you feel is not being properly marketed. Do not identify the agent. Be prepared to justify your recommendations.
5. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. The reason that an expired listing was not extended with the original listing office *MOST* likely is dissatisfaction with
 - a. the commission percentage.
 - b. communications.
 - c. price.
 - d. the length of listing.
2. Agent advice to owners on showing their home would *NOT* include
 - a. instructions to be present so they can volunteer information.
 - b. cleaning instructions.
 - c. landscaping instructions.
 - d. repair instructions.
3. When there has been little, if any, interest in a property, the listing salesperson should
 - a. convey this information.
 - b. tell the owner the property is priced 10% too high.
 - c. wait until there is something good to report.
 - d. tell the owner that you are expecting an offer.
4. The Equator Platform is a system for
 - a. locating property.
 - b. loan approval.
 - c. short-sale approval
 - d. a title search.
5. You want owners to give you neighborhood information
 - a. to keep the owners busy.
 - b. to give your listings a competitive advantage.
 - c. to use it to get more listings.
 - d. for none of these.
6. An owner should understand that reducing a list price to the CMA value
 - a. increases the likelihood of a sale.
 - b. does not mean that an owner is giving up anything.
 - c. results in both of these.
 - d. results in neither of these.
7. If possible, you should place a rider strip on your listing signs that shows
 - a. your fax number.
 - b. all your professional designations.
 - c. a desirable feature.
 - d. all of these.

8. A property brief should *NOT* be used as a
 - a. handout at open houses.
 - b. substitute for internet advertising.
 - c. handout at caravans.
 - d. mailing piece to answer inquiries.
9. A broker open house is of greatest value when the property
 - a. is in a large market with hundreds of listings.
 - b. is overpriced.
 - c. has a very limited use.
 - d. has been reduced in price.
10. Advantages of open houses include
 - a. pleasing owners because they indicate activity.
 - b. locating buyers for other property.
 - c. obtaining leads for listings.
 - d. all of these.

8

UNIT EIGHT



ADVERTISING

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- explain the objective of advertising and describe the AIDA approach to advertising;
- describe basic advertising guidelines, including media choices;
- evaluate advertising effectiveness;
- explain the legal implications of advertising; and
- describe an advertising budget.

KEY TERMS

AIDA approach	direct mail advertising	pay per click
annual percentage rate	display advertising	personal advertising
bait-and-switch	incentives	press releases
advertising	institutional advertising	specialty gifts
blind ads	media choice	specific advertising
business card	name tag	team sponsorship
car sign	newsletters	Truth in Lending Act
classified advertising	operational advertising	
company dollar	outdoor advertising	

ADVERTISING OBJECTIVES

Advertising is the process of calling people's attention to something to arouse a desire to buy or to obtain more information about the product or service being promoted. The real estate industry could not exist without advertising. In addition to advertising products for lease or sale, the real estate industry also advertises for sellers and for salespeople. You will see that real estate advertising takes many forms.

Real estate advertising may be divided into two major types: institutional advertising and specific advertising. These two categories describe the two goals of real estate advertising.

Institutional advertising attempts to create a favorable image of the real estate company, the broker, and the salesperson. It keeps the company's name in the public eye and aims to inspire trust, confidence, and goodwill. Institutional advertising, often done by organized groups having similar interests, manifests pride in and respect for the real estate business. Individual brokers may be required to share some of the costs incurred in this type of advertising.

Specific advertising, also called **operational advertising**, is concerned with immediate results. It describes a particular piece of property and stimulates activity in a specific property or an entire tract of homes. In specific advertising, a broker's advertisements are in direct competition with the advertisements of other brokers.

THE AIDA APPROACH TO ADVERTISING

The most common, and probably most important, reason for advertising is to find ready, willing, and able buyers for sale listings. All the listings in the world will do you no good unless someone finds a ready, willing, and able buyer and makes that elusive sale.

Why do people buy? Prospective purchasers buy a particular piece of property for the benefits it offers. The most fundamental benefit is shelter, but the property also might provide other things that are important—security, good schools, convenience, recreation, prestige, and a lot more. The purpose of advertising is to communicate these benefits through the property's features—its price, size, location, and so on. People do not buy for the physical features of a property, but rather for the benefits those features offer, such as a relaxing life style, a feeling of security or love of family. Some people buy based upon how others will react.

If an ad is to be read and thus attract buyers, it usually must be designed to grab the reader's **A**ttention, stimulate his or her **I**nterest, generate a **D**esire, and lead the reader to **A**ction. This is commonly referred to as the **AIDA approach**, from an acronym made up of the first letter of each step involved.

- **Attention**—The first step in any type of advertising is to gain attention. *Attention getters* include headlines that use words and word combinations, as well as typefaces and layouts that attract prospective buyers and encourage them to read further. You might gain attention with color, movement,

message, sound, or even something odd or out of place, such as a misspelled word or an outrageous statement. It could even be humor. Whatever is used, you cannot get a message across until you have gained the attention of the intended recipient of the message.

- **Interest**—The ad should arouse interest in the specific product or service offered. Probably one of the best ways to arouse interest is through curiosity. Curiosity can be stimulated by ensuring that the ad allows the reader to imagine using and enjoying the benefits of the product or service.
- **Desire**—Once the person's attention is attracted and her interest is aroused, the ad can create desire by appealing to the senses and emotions. At this stage, language must be clear and concise and inspire the reader's confidence. Wherever possible, the advertising should try to build mental images and picture the reader as the final recipient of the product or service.
- **Action**—Finally, the ad should move potential buyers to take action. The advertisement should be directed toward helping them make a decision, to convince them that they want to know more. The action desired by a real estate advertisement is either a phone call or email to you or your office; an actual visit to your office, an open house, or a project; or a visit to your website for pictures and more information. If an ad fails to evoke action from a recipient of the message, then, to that person, the ad is really institutional in nature. It helps in name identification and general goodwill but has failed to bring in a prospective buyer.

The AIDA approach:
Attention, Interest, Desire,
Action

ADVERTISING GUIDELINES

There are five basic tenets of advertising:

1. Advertise the right property
2. Know when to advertise
3. Choose the right market
4. Use the proper media
5. Use effective advertising techniques

By use of the internet, it is now possible for a real estate office to advertise all listings at the same time. This is not possible with print advertising. If you are trying to generate a great number of prospects, consider placing the listings that have the greatest general appeal in a predominant position on your website. We know that buyers responding to a real estate advertisement in print are likely to buy a property other than the property advertised. For this reason, we strive to advertise properties in areas and/or price ranges where we also have other available properties. This tactic increases the likelihood that prospects who respond to advertisements will become buyers.

Knowing when and where to advertise, whom you want to reach, and the features to emphasize is extremely important. You probably would not feature a swimming

pool in an advertisement for a home in northern California at the beginning of a cold winter; a fireplace would be a more appropriate feature. Likewise, you would probably avoid advertising an elegant, expensive home in a local shoppers guide that is distributed primarily to low-income families.

ADVERTISING MEDIA

Choosing Advertising Media

In determining media choice, the advertiser must begin with three basic considerations:

1. The target audience to be reached
2. The message to be conveyed
3. The money available for media purchases

This means that in addition to determining what to say, the broker must evaluate which medium or combination of media will deliver the maximum number of potential customers for the expenditure the broker can afford.

Because the message cannot contribute to sales until prospective buyers are exposed to it, the message must be delivered within sight or earshot of such prospects. The various advertising media perform the delivery function.

Media choices available include the following:

- Personal advertising
- Internet property sites
- Office and personal internet sites
- Social media
- General circulation daily
- General circulation weekly
- Weekly throwaway
- Foreign language and ethnic papers
- Special-interest papers (such as mobile home news)
- Special-interest publications
- Homebuyer magazines
- Radio
- Television
- Outdoor advertising
- Signs
- Direct mail
- Newsletters
- Telephone directories

- Press releases
- Specialty gifts

When choosing the medium, keep in mind that the objective is not necessarily to reach the largest number of people but to reach the greatest number of potential prospects at the least possible cost.

In determining the media to be used, ask yourself the following two questions:

1. What are my marketing goals?
 - To get more sale listings?
 - To get more buyer listings?
 - To attract more potential buyers?
 - To increase market share?
 - To enhance recognition of name?
 - To enhance recognition of professionalism?
 - To sell listed properties?
2. Which specific media will reach my target audience?

Personal Advertising

Personal advertising should start with a **name tag** identifying you as a real estate professional. The tag should be readable from at least 6 feet away. Preferably, it should use the same color as your office signs and business cards. If you are a REALTOR®, “REALTOR®” should be on your name tag. If you have achieved a significant professional designation, such as GRI, this also should be on your name tag.

Personal advertising concentrates on you, rather than on your firm.

Your personal advertising should include your **business card**. You want people to be able to identify your card among a group of cards. The easiest way to accomplish this is with your photograph on the card. As stated in Unit 1, your card should include your email address, fax number, and cell phone number. If you have foreign language skills and feel they are important in your work, your card should indicate those skills. Your real estate license number must be on your business card. It is required on cards because they are a first point of contact.

Some agents are now using personal or team logos on their business cards, personal websites, mailings, property briefs and advertising. While firm information is also provided, the logo helps to distinguish the agent from other agents and sells the individual.

A color such as beige or light gray will stand out from other cards and make your card easier to locate.

Because of the amount of information that you may require, you might consider a foldout card.

Smartphones can read QR (quick response) codes. A smartphone can scan and capture a business card with a QR code. The code can contain business card data,

as well as access to websites, resumes, et cetera. Data can be transferred from one smartphone to another by a simple scanning process.

A magnetic **car sign** is a good low-cost advertising tool. Include your name, the name of your firm, REALTOR® (if applicable), and firm logo (a firm-identifying design). The logo should appear on all advertisements, signs, cards, and so forth. Magnetic signs that proclaim “Open House,” as well as your name, can turn your vehicle parked in a driveway into an invitation to visit.

It is a good idea to print out copies of your résumé with your photograph. You can give them to prospective buyers and sellers, as well as use them as an enclosure with mailings (both snail mail and email).

Your own column. In smaller-circulation local papers, it may be possible to write a weekly real estate column. Being an author of a column will increase your name recognition, as well as show your knowledge and professionalism.

Personal business sites. Many agents now have their own websites that include personal information, as well as information on properties they are offering, frequently with links to other sites. Because salespeople in 100% commission offices act much like independent brokers, it makes sense for such agents to have their own websites.

The salesperson’s own website can include many of the links from the office site, but it must include the broker’s name and the salesperson’s license number.

Blogs. A blog is a website maintained by an individual with emphasis on a particular subject with regularly updated news and comments. Many blogs allow viewers to leave comments. It should be separate from your personal business website. A blog could be centered on an activity or a particular geographical area such as “Sun City Happenings.” It might include community events, information on residents, as well as real estate data on listings, sales, rentals and valuation trends. By including valuable information, you promote yourself in a positive manner. There are many sports blogs about particular local teams. There are even blogs as to social activities, such as line dancing or bridge.

A blog should not look like a commercial home page. It should be loaded with information for the targeted audience.

A problem with blogs is that they can take much of your time. Some agents use personal assistants to keep the blogs current after they have been established.

Social networking sites. Social networking is not just for teenagers with agile thumbs. A vast array of social networking sites is now available to help companies and/or an individuals in their business endeavors. Social networking allows a dialog with followers. New ways of using these sites are being discovered almost daily. A growing number of companies on the internet offer tutorials about the business use of social networking and offer to handle your page on a site.

Avoid religion and politics on your websites unless you want to eliminate a great number of potential clients. Don’t use social media to make yourself seem

important. Use it to show yourself as caring, helpful and community-minded individual. Don't overload your websites with garbage information. Keep in mind that real estate is local, so what is happening in your community will be of greatest interest.

A number of books and videos are available on how to use social networking sites. In addition, a number of firms and organizations offer seminars on social media marketing.

The internet offers amazing opportunities and is the future of real estate communication.

Newspaper Advertising

Newspapers are the oldest advertising medium in the nation and in the past have been the keystone of the real estate business. Although the first advertisement appeared in the *Boston Newsletter* in 1704, newspapers were rather scarce until 1790. After many decades of phenomenal growth, newspaper sales and readership are now in sharp decline. The high cost of advertising and growth of the internet have resulted in little reliance on real estate classified advertising. The classified ad sections of large circulation newspapers have declined from many pages to a few columns. However, there is still a place for print advertising.

Foreign language papers are thriving in areas of recent immigration where English is a second language.

Weekly newspapers in smaller communities are still an effective media for real estate ads because the percentage of readers remains high due to their local news content. The cost of advertising in local weeklies is manageable.

Advertisements that do not identify the advertiser as a broker are called **blind ads** and are illegal in California. A blind ad is deceptive because readers are induced to contact the advertiser in the belief that they are dealing directly with an owner rather than an agent.

Classified advertisements. Due to cost and short lifespan, classified ad sections have all but disappeared from large circulation newspapers. They are still effectively used in lower circulation community newspapers as well as free throwaways.

Large circulation papers may list real estate advertising often divided by area. These supplements include photos and details about homes. Besides large display ads, there are usually many smaller ads in a format such as used for property magazines. Some brokers' ads cover several pages to feature a number of their listings.

Display advertisements. Display advertising may be either institutional or operational in nature. It may combine the two, so that it is used primarily to build goodwill and prestige and keep the name before the public, while at the same time advertising specific properties. Be sure to include an internet address that can offer additional information.

Because of costs, display ads are primarily used for selling developments rather than single homes. An exception would be newspapers in smaller communities offering lower advertising costs. Consider obtaining professional help for display advertisements.

General Rules for Display Advertising

- Most people read from the upper left corner to the lower right corner. Therefore, the ad should be composed with the heading on top, illustration and copy in the center, and firm name, phone number, and web address in the lower right quarter.
- If reproduced well, photographs may be more effective than drawings, but photographs might require professional retouching to increase contrast, remove distracting features, and blur backgrounds.
- Include white space. White space emphasizes the message.
- Don't use more than two typefaces in an ad.
- Ads in the outside columns will generate more interest than ads in the inside columns.
- Typefaces with serifs (the fine lines at the end of letter strokes) are generally more readable than sans-serif typefaces (without the lines).
- Lowercase letters are easier to read than capital letters.
- Short sentences are more readable than long sentences.
- Short words are more readable than long words.
- If you pull readers through the first three lines, they are likely to read the entire ad.
- Use words that are readily understood.
- Don't be too subtle or sophisticated.
- Always tell the reader what to do (call, come in, or check the internet).
- Always use the same logo in your ads.

Magazine Advertising

The cost of advertising in a magazine having mass appeal generally is prohibitive. However, magazines appealing to special-interest groups could be productive for the right property. As an example, if you had 40 acres zoned for a salvage yard with railroad siding access, you might consider advertising it in a trade magazine for salvage yard operators.

Special city or area magazines are usually slick paper magazines with very limited circulation. They are likely to be most effective for very impressive homes.

Area homebuyer magazines are found in most areas of California. These magazines are particularly effective for newcomers to the area. There are variations of these magazines that cover just new home developments and rentals. It is believed that the prevalence of websites will diminish the effectiveness of these magazines.

WEB LINK



Similar to homebuyer magazines, e-brochures are for the internet. They can be sent as emails or included on a CD business card. Software to prepare e-brochures can also be used to prepare printed brochures. You might want to check www.imprev.com for more information.

Radio and TV Advertising

Compared with print media, radio broadcasting is a relatively new advertising medium. The first paid advertisement on radio appeared in 1922. Today radio can reach, at one time or another, nearly 99% of the households in the United States. Customers can be reached traveling to and from work, to and from the market, at the beach, or in their own homes. Radio is effective because the audience can listen while doing something else.

In using radio advertising, match the property with the demographics of those who listen to the station. Unless you hope to sell a multimillion-dollar estate to a rock star, don't advertise it on a hard-rock station. Foreign language stations are being used effectively for brokers who are trying to tap into immigrant groups.

Television delivers advertising messages to both the eye and the ear. What's more, it permits the use of motion and color and usually delivers the message in the home. Television advertising, however, is expensive, and it is used sparingly for general real estate advertising. It is used most often by large real estate firms, franchisers, and developers.

Home showcase programs are becoming popular on television, particularly in smaller markets. They allow photos, as well as a verbal descriptions of property benefits. There are cable stations that have 24-hour bulletin boards of things for sale. Some brokers have reported excellent responses to these bulletin-board stations primarily for low-cost and low-down-payment homes and rentals.

Outdoor Advertising

Outdoor advertising is used less frequently than other media, depending largely on the size of the town and the availability of advertising billboards. Usually, billboards are used by larger brokerage offices or chain operations. However, signs may be painted on buildings, fences, bus-stop benches, or other display places by individual real estate offices.

Because of their cost, which can be several thousand dollars per month depending on features and location, the real estate use of billboards has been primarily for large new developments.

For Sale Signs

According to *Realty Times*, in 2018 yard signs accounted for 7% of buyers' introduction to the home they purchased.

Your sign should be distinguishable from that of your competition.

While relatively inexpensive, For Sale signs are effective and they work seven days a week, 24 hours per day. The design of a licensee's For Sale signs should be unique, original, quickly informative, and as attractive as possible. The attention-getting value of the signs will be enhanced through the use of color, unique design, an identifiable logo, and design and size of print. Rather than plain paint for your For Sale signs, consider reflective paint that stands out when light hits the sign. A new twist is a glow-in-the-dark paint that remains bright for several hours after dusk. (Your sign firm should be able to offer this product.) Solar-powered light fixtures are also available that allow signs to stand out at night.

Colors used should provide a high degree of contrast for readability (the best color contrast is yellow and black, using a light yellow background against black lettering). To distinguish their signs from those of competitors, some brokers have changed the shape of their signs. A simple change is a vertical rectangle rather than a horizontal one. Others have gone to oversized signs or odd-shaped signs. Whatever their makeup, signs should be coordinated with any printed material being created for the office. Riders for special features or for listing a salesperson's name and phone number and even a web address should be considered. (Talking signs and sign information boxes were covered in Unit 7.)

Direct Mail

Although **direct mail advertising** is rather expensive per contact, it can be an effective way to reach a selected audience. It may be institutional in nature or be designed to promote a new subdivision, an area, or even a specific piece of property. Various vehicles are used in this method of advertising, including pamphlets, brochures, letters, postcards, booklets, pictures, and maps.

This medium may encourage the reader to seek more information by returning a response device that may result in additional material and inclusion in mailing lists and other sales promotions. An excellent approach is to offer prospective customers free email updates of new listings, including photos, by simply sending you an email. Of course, every direct mail piece should reference your firm's website. Direct mail approaches were more fully discussed in Unit 4.

Direct Email

We have shown you one way to obtain email addresses of prospects with the visitor rating form in Unit 7. We will be showing you more ways to have prospects willingly provide their email addresses. The beauty of a direct approach with email is that, except for preparation time, it is a no-cost approach. Direct approach emails can include colored pictures, movement (motion), and even sound. You can email a zip code by utilizing mailing list firms that also have email addresses. Like any other advertising, you want your direct mail and email ads to stand out from the commonplace. Consider Robly or Constant Contact for effective emails (<https://app.robly.com> and www.constantcontact.com). An unsolicited email must clearly indicate that it is an advertisement piece and comply with the CAN-SPAM regulations.

WEB LINK



Newsletters

Many offices, as well as individual agents, successfully use **newsletters**. They include information that would be of interest to the recipient, as well as information about the firm or agent. They are particularly valuable in niche marketing. As an example, one agent who has established her niche in marketing mobile homes in a particular park has a monthly newsletter that includes personal information about residents and information on new residents and club schedules and special events, as well as currently inventory and sales. Computer programs and numerous services are available that will allow you to quickly publish a quality newsletter. You can also subscribe to services that print and distribute newsletters with your photo and contact information but leave room for your own material. Paper newsletters have been diminishing in importance because of the growth of email newsletters and agent blog websites.

Telephone Directories

Although many real estate firms have yellow-page listings, often in bold type, telephone directories are not as cost-effective as those in other advertising media. The internet is first choice for a large percentage of people. The effectiveness of your yellow-page ad can be increased by the use of your internet address in your ad. While consumer use of the printed yellow pages books has declined, yellow page directories are available online.

Press Releases

Press releases are really free advertisements. If you look in the real estate section or supplement of any newspaper, you will find that most of the articles are taken from press releases. Your local newspaper will publish press releases that are well written and have a newsworthy message if you are an advertiser. Some examples of such messages are the grand opening of an office, the groundbreaking for a development, the listing of a historic building, any sale where the buyers or sellers are newsworthy, special awards or designations received by agents, and office promotions.

Press releases are free advertisements.

Whenever possible, include a high-quality digital photo. Include a caption, and if people are shown, be sure to identify them in the caption.

Specialty Gifts

Most offices include **specialty gifts**, or promotional giveaway items, in their advertising budget. These may include notepads, maps, magnetic holders, calendars, pencils, directories, and pens with a salesperson's and the firm's identification. Such items promote you or your company continually and can be dispensed through the office, at business and social gatherings, at open houses, and during door-to-door canvassing. They are excellent door openers and can be used effectively to get acquainted in a neighborhood.

Team Sponsorship

Your firm name used on team jerseys such as bowling teams, little league, and cyclists gives you community-minded visibility. It is institutional advertising and creates goodwill.

Swap Meets and Local Events

Some agents set up booths at area swap meets and fairs. Their signage may say, “Want to Know What Your Home is Worth? Ask Me at No Cost!”, “Want to Own for What You Pay in Rent?”, or “Buy This Home with 3% (or 0) Down!” Public booths generate leads at relatively low cost.

The Internet

The internet has become the predominant marketing tool. Just a few years ago, it was rare to have a transaction where the buyer or the seller contact resulted from information contained on a website. Today, most offices are reporting that the majority of their contacts result from internet postings. Surveys of property buyers reveal that in most areas over 90% of buyers indicated that they used the internet for their property search. (NAR studies showed 93% in 2019.) Some 63% of buyers say they viewed homes they first found on the internet. While there are a great many sites where you can post your listings, it is extremely important that you have your own office website if you are going to be competitive.

Websites have been getting more elaborate, frequently with multiple pictures of each property and with sound and motion. Virtual tours allow a viewer to “walk through” the property; this virtual “walk-through” can either half-sell the property or eliminate it for a prospective buyer. By paying an extra fee, many home search websites offer enhanced property coverage, which increases the effectiveness of your property presentation.

One advantage of the internet is its relatively low cost once your website has been established. Be sure to include your web address in all your advertising in other media.

A decreasing portion of the advertising pie goes to print advertising. The internet is much more effective than print for real estate firms. Because the internet is the best bargain in town, print ads are dwindling in most papers and magazines. The internet allows a small firm to have a large presence within a market area. Some companies are now going 100% internet in their marketing efforts. Other firms claim to be using newspapers sparingly and then primarily to placate owners.

Before you prepare a website, we recommend you view the websites of a number of large brokerage offices in major metropolitan areas across the country. Note the differences in quality of the sites and in site features. Make a note of the features you want in your site, as well as why you feel some sites are outstanding. Now you are ready for your webpage preparation.

Features that you want to include on your website are as follows:

- **About us**—This feature allows a viewer to obtain information about your firm and its personnel; includes résumé and testimonial letters.
- **Inventory**—Here you provide photos and descriptions of your listings. If there are a great many listings, the viewer should be able to enter parameters such as price, size, and location to narrow the search for properties. If a property is advertised by number, the viewer should be able to go directly to that property. The inventory should also include the ability to increase size of photos, as well as view additional photos. Virtual tours or videos should be considered for all listings.
- **Area map**—This can show the locations of properties, as well as the broker's office.
- **Email offer**—Each page of your site should offer the viewer an opportunity to receive emails of new listings before they are advertised.
- **Motion and/or sound**—These features hold the viewer's attention and will distinguish your site from others.
- **Loan qualifying opportunity**—This viewer option will provide information on the prospect and allow further direct contact.
- **Back to home page**—This feature should be on every page of your website.
- **Contact us**—This will allow the viewer to send an email to you. Agents can also include a link that says, "Search MLS here," and, through the use of a system known as IDX, pull MLS data to display on the agent's website.

While agents can prepare their own webpages using one of the inexpensive webpage programs, these are often boilerplate sites and fail to provide maximum viewer impact. As previously stated, we strongly suggest that a professional webpage designer create your site. Before you hire a designer, be certain to view other sites created by the designer. A correctly designed website can ensure long-term use and will attract prospective buyers, sellers, lessors, and lessees, as well as enhance the image of your firm.

Besides your personal and office websites, it is important that your property information be distributed to MLS and other area and national websites.

WEB LINK



Many agents have reported success with internet classified sites such as www.craigslist.org and www.oodle.com.

Pay-per-click ads. Many firms have reported success with **pay-per-click ads** on websites other than real estate sites. Sites that sell the benefit of a community are logical sites for pay-per-click ads. Every time a website viewer clicks on your ad, you pay a small fee. A click on the ad could lead to your website's homepage, which could then lead to information about you and the available inventory.

Incentives

Brokers often offer **incentives** for buyers to work with their firms. A common incentive is

- “Free one year home warranty on every home purchased through Clyde Realty.”

Similarly, builders will often offer incentives, especially when they wish to clear up project inventories. Examples:

- “Free landscaping, an \$18,000 value.”
- “\$20,000 free upgrades on our remaining models.”

Property managers with an excessive vacancy factor often advertise “First Month’s Rent Free!”

In giving incentives, there’s no price reduction but the effect is the same as a price reduction.

Other Forms of Advertising

There are many other ways to advertise: movie screens, videotapes, window displays, transit ads, bus shelter and bench ads, electric message boards, marquee ads, supermarket carts, and so on. You will find that your advertising is limited only by the limits of your imagination and the thickness of your pocketbook.

Advertising by a Real Estate Team

Under real estate law, a team name is not considered a fictitious name, so no paperwork is required.

In California, a team name must include the last name of at least one of the sales agents in addition to the word *associates*, *group*, or *team*.

Team names cannot use the words *broker*, *brokerage*, or other terms indicating independence from the responsible brokerage.

The employing broker’s name must be displayed just as prominently as the team’s name used in any advertising material.

ADVERTISING EFFECTIVENESS

Is your advertising program producing the results you want? There is an old saying in advertising: “Half of my advertising is worth the money. The problem is that I don’t know *which* half!” If you don’t set up an evaluation system, you will never know. Identifying the part of your advertising dollar that is producing your sales can be critical to success. You must be able to determine which types of advertising are most effective for you and which produce the most income. You can do that by tracking ads and determining their cost compared with the amount of business they generate. You can even pinpoint which approach and/or medium is most effective for a particular type of property.

The key to a good measurement system is simplicity. One method to use when you run a newspaper ad or send out a letter or direct mail piece is to put a code on the bottom of the piece. A simple technique is to use a designated telephone number. Thus, respondents who contact you by a call to that number indicate that they are responding to a particular ad. If possible, try to identify separately for each ad the number of prospects and sales that result, so you will know the quality as well as the quantity of leads you obtain. Then determine the cost of each advertisement. Many offices require that the receptionist who handles incoming calls keep telephone logs. The receptionist can ascertain the type of ad seen by the caller and the ad medium and can enter this information into the log.

Just because one medium is not as effective as another in terms of number of responses does not mean the medium is ineffective.

You must sell the benefits that your firm has to offer.

You should evaluate ads for effectiveness.

EXAMPLE Jane Freyman placed two identical ads in different newspapers for the same period. She knew that this was important because she wanted to test which publication worked best. If she used different-quality ads, one would naturally pull better because it was a better ad, not because the publication was better. The only difference was that the ad in paper A directed people to ask for department X, whereas the ad in paper B told people to ask for department Y.

There was a difference in the cost of running the ads. A had a circulation of 20,000 and charged \$200 for the ad. B had a circulation of 100,000 and charged \$1,000. The following are the results that Freyman tabulated:

Paper A	Paper B
15 prospects	27 prospects
5 eventual sales	9 eventual sales

Which paper is a more attractive advertising medium? Does Freyman simply want greater numbers of sales, or does she want to get more sales more cost-effectively?

Assuming that the amounts of the individual sales were comparable, B probably would be more attractive to Freyman if she wanted more sales. The ad in B generated more eventual sales. However, if Freyman was more interested in cost-effectiveness, she probably would prefer A. The sales numbers were smaller, but so were the costs—not only the cost of the ad but also the cost per sale:

$$\$200 \div 5 \text{ sales} = \$40 \text{ per sale}$$

$$\$1,000 \div 9 \text{ sales} = \$110 \text{ per sale}$$

LEGAL IMPLICATIONS OF ADVERTISING

Advertising of real property is regulated by California real estate law, the regulations of the real estate commissioner, and the federal Consumer Credit Protection Act (Truth in Lending Act). The following sections from the California Business and Professions Code and the Regulations of the Real Estate Commissioner are merely condensations of the actual statutes and regulations.

California Business and Professions Code

Section 10139—“Penalties for Unlicensed Person.” This law stipulates that any unlicensed person acting as a licensee who advertises using words indicating that she is a broker is subject to a fine not to exceed \$20,000 and/or imprisonment in the county jail for a term not to exceed six months. If the violator is a corporation, it is subject to a fine of \$60,000.

Section 10140—“False Advertising.” This section states that every officer or employee who knowingly advertises a false statement concerning any land or subdivision is subject to a fine of \$1,000 and/or one year’s imprisonment. In addition, the licensee may have his license suspended or revoked.

Section 10140.5—“Disclosure of Name.” Each advertisement published by a licensee that offers to assist in filing applications for the purchase or lease of government land must indicate the name of the broker and the state in which she is licensed.

Section 10140.6—“False Advertising.” Licensees may not publish in any newspaper or periodical or by mail an ad for any activity for which a real estate license is required that does not contain a designation disclosure that they are performing acts for which a license is required.

While the law requires licensees to include their license number in contact material, newspaper and periodical advertising are exempt, as are For Sale signs and television ads.

Section 10235—“Misleading Advertisement.” A licensee may not advertise, print, display, publish, distribute, televise, or broadcast false or misleading statements regarding rates and terms or conditions for making, purchasing, or negotiating loans or real property sales contracts, nor may a licensee permit others to do so.

Section 10236.1—“Inducements.” A licensee may not advertise to offer a prospective purchaser, borrower, or lender any gift as an inducement for making a loan or purchasing a promissory note secured directly by a lien on real property or a real property sales contract.

Section 10131.7—“Mobile Home Advertising.” A licensee is prohibited from engaging in the following activities:

- Advertising a mobile home that is not in an established mobile home park or is being sold with the land
- Failing to withdraw an advertisement of a mobile home within 48 hours of removal from the market
- Advertising or representing a used mobile home as a new one
- Making a false statement that a mobile home is capable of traveling on California highways
- Falsely advertising that no down payment is required on the sale of a mobile home when in fact one is required

Regulations of the Real Estate Commissioner

The real estate commissioner can adopt regulations that have the same force and intent as law. Two of these regulations follow.

Article 9, Section 2770.1—“Advertising License Designation.” Use of the terms *broker*, *agent*, *REALTOR®*, *loan correspondent*, or the abbreviations *bro.*, *agt.*, or other terms or abbreviations, is deemed sufficient identification to fulfill the designation requirements of Section 10140.6 of the Business and Professions Code.

Article 9, Section 2773—“Disclosure of License Identification Number on Solicitation Materials.” All first point-of-contact solicitation material must disclose the licensee’s eight-digit real estate license number. This includes business cards, stationary, websites, flyers, et cetera.

Note: Advertising material must include license number or team name, not both.

Code of Ethics of the National Association of REALTORS®

Even though the Code of Ethics of the National Association of REALTORS® is a moral code and as such is not enforceable by law, although most are now covered by statute, its guidelines are observed by most real estate licensees in California. Professional courtesy and ethics should not end with those acts that have been sanctioned by law. The individual who tries only to stay on the border of the law may at some time step across that border.

Regarding advertising, Article 12 of the 2018 Code of Ethics states that

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional.

12-4

REALTORS® shall not offer for sale/lease or advertise property without authority.

12-5

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®’s firm in a reasonable and readily apparent manner.

12-6

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and REALTORS® or real estate licensees.

Truth in Lending Act

The **Truth in Lending Act**, or Regulation Z, a part of the federal Consumer Credit Protection Act of 1968, requires disclosure of credit costs as a percentage, as well as total finance charges. It is enforced by the Federal Trade Commission.

Truth-in-lending applies to credit extended with a finance charge or credit payable in more than four installments. If the amount or percentage of down payment, the number of payments or period of repayment, or the amount of payment or amount of finance charges (trigger terms) is included in any advertisement, then the ad must include three elements:

1. Amount or percentage of down payment
2. Terms of repayment
3. **Annual percentage rate (APR)** (the true interest rate considering points and other loan costs; the nominal rate is the rate stated on the note)

Advertising the APR alone will not trigger the these disclosures.

If creditors extend credit secured by a dwelling more than five times per year, they must furnish the purchaser a truth-in-lending disclosure showing all loan facts. However, the total amount of finance charges for the term of the loan need not be shown for first mortgages or loans used to purchase real property. (Because escrow impounds for taxes and insurance are not considered loan costs, they need not be listed.)

Truth-in-lending makes **bait-and-switch advertising** (advertising property that agents don't intend to sell or that is not available in order to attract buyers for other property) a federal offense.

Rescission right. If the loan is for consumer credit secured by the borrower's residence, the borrower has the right to reconsider and cancel. This right is valid until midnight on the third business day following loan completion. (Rescission right does not apply to home purchase loans but does apply to home equity loans and home refinancing.)

Exemptions. Loans exempt from all truth-in-lending disclosure requirements are business loans, agricultural loans, construction loans, personal property loans over \$50,000, and interest-free loans with four or fewer installments. Non-owner-occupied housing is considered a business and thus exempt from disclosure. Seller carryback financing where the seller is financing the buyer (not more than five times per year) is also exempt.

CIVIL RIGHTS ACT OF 1968

The Civil Rights Act of 1968 prohibits discriminatory advertising (see Unit 2). Discriminatory advertising includes advertising that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin.

There are some discriminatory words and phrases that are not readily recognized by many as being discriminatory. In addition, some words carry different connotations among different social, ethnic, and economic groups. Words also have different meanings based upon geographic location.

A number of groups have tried to clarify what was and was not acceptable wording for advertising by publishing lists. These lists varied greatly. Some lists went so far as to indicate that advertising the “view” was discriminatory to the blind.

Supervising social media advertising

Real estate licensees should take care to ensure that the names on Instagram, Facebook, and other social media accounts don’t give the impression that the salesperson is acting without being under the supervision of a licensed broker.

For example, salesperson Betty Thomas at XYZ Brokerage, Inc., should not have an Instagram account that gives the impression that she is operating on her own. One could argue that www.instagram.com/bettythomasrealestatebroker or www.instagram.com/bettythomasrealty could be deemed deceptive and against the rules of the real estate commissioner if obtained by a salesperson.

Ideas of what to post on social media. As you start your career in real estate, it is important to make a decision as to how your accounts on social media are going to be set up.

- Are your social media accounts going to be separated into personal and business, or are you going to use one account for both?
- If they are going to be split, how often are you going to post to your business account? If you are going to use the same accounts for both, what percentage do you see being devoted to each aspect of your life?

Most social media experts agree that your business posts don’t always have to consist of hard-selling content. You can mix lighter material with the fact that you are in business and want more customers.

Here’s one idea for posting:

- Photos of houses or properties that you have just sold or listed. As a new real estate licensee, you might not have properties that you have sold or listed yet. In that case, consider posting pictures of properties that your company has listed or sold recently and the caption could be, “Our team just listed 123 Any Street! Message me for details!”

This lets your follower base know that you are active and in the real estate business.

It is a common marketing strategy among real estate agents to send just listed/sold postcards to a given database upon obtaining signatures on a contract. In the world of digital marketing, it should also be standard that a real estate agent post on all social media of their recent success completing a transaction. This means an Instagram, Facebook, and Twitter message announcing your recent transaction.

ADVERTISING BUDGET

Every successful real estate office and agent likely has developed a system for budgeting its expenses. One of the expenses that must be accounted for is advertising. Advertising is one of the most important steps in the marketing of real property, but it does cost money. Soon after starting in the business, a broker learns that a certain amount of the firm's income dollar must be allocated to this item to maximize returns.

WEB LINK



An advertising budget involves more than just the number of dollars to be spent in advertising; it should determine how the dollars should be allocated. According to HomeGain (www.homegain.com), in September 2005 the typical real estate advertising budget was allocated in the following manner:

- Newspapers 39%
- Other print 20%
- Direct mail 17%
- Online 11%
- Yard signs 8%
- Yellow Pages 4%
- Telemarketing 1%

This allocation has changed dramatically. Very few dollars are allocated to newspapers. The growth of the internet has resulted in a change in direction of advertising dollars. According to Cision PR newswire, by 2024, online media should account for nearly 77% of all real estate advertising spending. This is actually less than several other consulting firms predict.

According to Borrell Associates, by 2019, real estate agents and brokers had spent nearly 88.1% of their advertising budget online, up from 71% in 2013. Newspapers accounted for just 5.1% of advertising budgets. Borrell Associates also asserts that total real estate advertising spending is down 14%. A significant factor is lower advertising expenditures means greater reliance on the internet and reduction in higher cost advertising media.

The advertising dollar budget of an office is influenced by the advertising costs within a community, as well as by market conditions. As a rule, the time to increase advertising is when market sales are increasing. It is rare for expansion of advertising in a declining market to make economic sense, although reallocation of expenses should be an ongoing consideration.

Many offices and agents plan their advertising budget as a percentage of their anticipated income dollar. As an example, a firm might plan to use 10% of the office share of commissions (the **company dollar**) for advertising. Because economic changes can be rapid, a budget should be adjusted to reflect market change. In a down market, while total advertising dollars will decrease, the percentage of the company dollar spent on advertising will increase. Similarly, in an active market where total ad dollars will likely increase, the percentage of advertising costs to the company dollar will likely decrease.

A number of agents who charge reduced fees make up for some of their fee reduction by charging owners advanced advertising expenses. Expenditures are then made with the owner's funds.

SUMMARY

Advertising is the process of calling people's attention to a product or service. The real estate industry could not exist without the ability to disseminate information.

Advertising falls into two broad categories: institutional, which is basically advertising to promote the goodwill of the firm, and specific or operational advertising, which is to sell, locate, or lease a particular property.

The AIDA approach to advertising is basically that an effective ad should gain **A**ttention, **I**nterest the party intended, create **D**esire, and result in **A**ction. The five basic tenets or guidelines for advertising are as follows:

1. Advertise the right property
2. Know when to advertise
3. Choose the right market
4. Use the proper media
5. Use effective advertising techniques

Advertising really begins with the salesperson's personal advertising that includes a name tag, business cards, and magnetic car signs.

While a broad array of media choices are available, most of a firm's advertising budget was formerly devoted to classified advertising. To be effective, a classified ad must have a highly desirable feature in the heading or else have an attention-getting heading. While negative ads are generally not successful, in real estate they may be very effective. Fixer-upper ads that emphasize what is wrong with a property often receive an exceptional rate of response. Internet advertising is considered more effective than print ads at a fraction of the cost and has replaced print ads in budget emphasis.

Display advertising, because of cost, is more appropriate for expensive properties or large developments. Specialty magazine ads can also be effective.

The For Sale sign is effective at relatively low cost. Direct mail can be effective, but there is a high cost per contact.

Other advertising includes telephone directories, press releases, newsletters, and specialty gifts.

The internet is the most effective media today including personal and company websites, property websites, classified ad websites, blogs, and social networking sites.

It is essential that a firm understand the effectiveness of its advertising. By keeping track of responses, we can learn which medium or approach is most effective for which type of property. This knowledge will allow advertising planning based on past results, not just by intuition.

As a licensee, you are responsible for knowing the legal implications of real estate advertising. Licensees are prohibited from false, misleading, and discriminatory advertising. Of particular interest is the Truth in Lending Act. Besides prohibiting bait-and-switch advertising, advertising the amount or percentage of down payment, the number of payments or period of repayment, or the amount of payment or finance charge all will trigger the full-disclosure provision of this law. Certain words may have discriminatory connotations, so care must be taken in describing properties.

Today, the largest portion of the advertising budget is related to the internet. The advertising budget of an office will vary based on advertising costs within the market area. Many offices plan advertising based on a percentage of anticipated office income.

CLASS DISCUSSION TOPICS

1. In addition to a photograph, what other ways can agents make their business card stand out?
2. Prepare two internet postings, one with a feature heading and the other with an attention-getting heading, to sell the home in which you live.
3. Discuss all the ways a typical real estate office in your area advertises (include both institutional advertising and specific advertising).
4. Check the websites of local brokers. Evaluate the sites as to quality, giving your reasons for your evaluation.
5. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. The AIDA approach does *NOT* include
 - a. attention.
 - b. demand.
 - c. interest.
 - d. action.
2. Personal advertising includes
 - a. name tags.
 - b. blog websites.
 - c. car signs.
 - d. all of these.
3. What does the term *logo* refer to?
 - a. Your firm name
 - b. An identifying design or symbol
 - c. Length of gross opportunity, which refers to the time span of attention generated by an ad
 - d. None of these
4. Blind ads are ads that fail to include
 - a. a price.
 - b. the address of property.
 - c. broker identification.
 - d. property specifics.
5. The *MOST* cost-effective advertising medium for selling a home likely would be
 - a. television.
 - b. the internet.
 - c. classified newspaper ads.
 - d. billboards.
6. The average real estate brokerage is likely to spend the greatest portion of its advertising dollars on
 - a. internet postings.
 - b. classified ads.
 - c. radio and television.
 - d. personal advertising.
7. A billboard reads, “Joe’s Realty – Serving Price County.” The billboard would be considered
 - a. personal advertising.
 - b. specific advertising.
 - c. operational advertising.
 - d. institutional advertising.

8. An advertiser with an extremely low advertising budget would most likely avoid
 - a. press releases.
 - b. For Sale signs.
 - c. billboards.
 - d. the internet.
9. Which statement is *FALSE* about display ads?
 - a. Readers' eyes tend to move from upper left to lower right.
 - b. One large picture is generally more effective than several smaller ones.
 - c. Short words are easier to read than long words.
 - d. Capital letters are easier to read than lowercase letters.
10. In preparing display ads, a good advertiser should
 - a. eliminate as much white space in the ad as possible for maximum effect.
 - b. use different logos in different ads to avoid repetition.
 - c. use no more than two typefaces in an ad.
 - d. avoid using a serif typeface in the text.

9

UNIT NINE



THE BUYER AND THE PROPERTY SHOWING

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- explain why a call from a prospective buyer resulting from a sign differs from an inquiry resulting from a website or social media;
- describe how to turn inquiries into firm appointments;
- explain how to prepare for your first meeting with prospective buyers and how to qualify these prospective buyers regarding needs, motivation, and financial ability;
- describe how to enhance personal safety practices; and
- describe how to use qualifying information in selecting homes to view and understand that qualifying is an ongoing process.

KEY TERMS

back-end ratio
canned presentations
closed-end questions
feng shui

FICO score
floor time
front-end ratio
LTV

negative motivation
open-end questions
prequalify
robots

THE APPOINTMENT

Your initial buyer contact from advertising generally takes the form of a telephone call or email. Prospective buyers generally call or email about ads, For Sale signs, social media blogs, or your website picture and description, rather than coming to your office for general information. Emails are generally related to specific properties. The prospect has detailed information about a property or properties and prices. Your goal regarding the call is not to sell the property—seldom does a party buy property over the telephone or from an online posting. Your goal is to turn that call into an appointment so you can be in a face-to-face position in which a sale is possible.

A contact is a valuable commodity. An inquiry from which you fail to obtain an appointment or, at the very least, the property name and telephone number or email address is a total loss of overhead dollars. If you were to compute all office overhead, including advertising, and divide that monthly figure by the number of inquiries your office receives in the month, you would understand how much it really costs to bring in each inquiry. Wasting an inquiry might well be equivalent to throwing \$100 or \$200 into the wind. Good technique reduces the percentage of wasted inquiries.

Inquires should be responded to promptly. The party may be interested in another property as well as the property you are marketing. Your delayed response could mean success for some other agent.

A few offices still have designated periods of **floor time**, or *opportunity time*, where agents are given inquiries in rotation. If you do have floor time, be prepared to turn telephone and online responses from inquiries into appointments.

Telephone and email inquiries are not limited to office hours and floor time. Contacts can be at all hours and on home phones and personal cell phones.

Prepare to Receive Telephone Calls

You should be prepared to field inquiries at all times. Have copies of both your own current ads and your office ads from the prior weekend, as well as all office listings and internet postings, so that they are readily accessible. Make notations on ads so you know what property each ad refers to. Review the listings so the information is fresh in your mind. Also, consider likely **switch property** priced up to 20% more or less than advertised properties. In the event you reveal some feature that “turns off” the person inquiring, you need something at hand to switch to.

Have a map of your community readily available with numbered adhesive markers referencing all your office listings. If you have wall space near your desk, this is an excellent place for this map, but you also want it as an app on your smartphone. This map is essential because callers on For Sale signs often have the wrong street but usually the right general area. Consider switch property for sign inquiries. As a general rule, you know that callers on For Sale signs

- like or would be satisfied with the area, and
- like or would be satisfied with the appearance of a home with a similar exterior.

Handling the Inquiry

Switch properties are other properties that a caller about a particular property is likely to be interested in.

People calling about ads often buy property other than the property they initially inquired about. The same is true for calls prompted by For Sale signs. This is why it is important to know your inventory. You will be able to readily switch your discussion to appropriate properties as necessary. For this reason, as you begin your real estate career, it would be wise to spend time each week physically visiting properties for sale and studying the available inventory and/or studying internet listings.

People who call in reference to a sign might not tell you that a price you have quoted is beyond their means. In fact, they might even ask for more information. However, you won't know this unless you mention a switch property priced significantly less than the property called about. If the callers show interest in the switch property, the original property that they called about may be too expensive. As to switch properties, keep in mind that while callers on For Sale signs are often looking beyond their means, callers on priced ads are often hoping to buy a property that is less than they can afford to pay.

If a caller has viewed the property on the internet, you know that the caller likes the appearance of the property and the description seems to "fit" her needs. You also know that the property is priced within the range the caller expects to pay and that the property's location and address are satisfactory. Prospects who call about an internet posting are more likely to buy the property they are interested in than are prospects calling from other advertising. An internet inquiry is, therefore, a valuable inquiry because the callers have half-sold themselves on the property.

The following are some general rules about dealing with telephone inquiries from prospective buyers:

- Obtain the caller's name and telephone number
- Ask questions about family size and needs
- Ask how they found out about the property
- Find out what interested them about the ad or internet posting
- Find out what the prospective buyer is interested in and why
- Find out if the caller has been prequalified or approved for a loan and for how much
- Hold the details—give a little more information than was in the ad. The less information given, the greater the chance of ending the telephone call with an appointment.
- Answer home elimination questions with a question. For example, if a caller asks, "Does that house have three bedrooms plus a den?" your answer

should be “[Mrs. Jones], do you need three bedrooms plus a den?” If the caller asks the price, you should ask, “What price range were you interested in?” If the questioning reveals complete unsuitability of the property, you should be able to switch to a similar property that has the required features.

- Close on an appointment. The choice given should be what time, not whether the caller wants to see the property.
- Set the place for the meeting. There are only two places for an initial meeting with a potential buyer:
 1. At your office (preferred)
 2. At the buyer’s home

(You may meet a prospective buyer at a property that the buyer wishes to purchase after having successfully preapproved them with a lender.)

- Include mention of other property that may interest the prospects. This will help reduce the likelihood of a no-show.
- Keep the call short and end the call after the appointment is set.

For an internet inquiry, because the caller generally wants to see the property, there should be no difficulty setting up the appointment.

A suggested approach to calls on the ad shown is as follows:

My name is Howard Young. What is your name, please?

Note: If the ad indicated a web address, you want to know if the caller viewed the property on the internet. If the caller has, treat the call like gold because the caller is already half-sold on the property.

Yes, that is a lovely three-bedroom home, Mrs. Jones. How large is your family, [Mr./Mrs.] Jones?

That home is in one of the nicer areas of Willow Springs. Is that the area you are interested in?

Are there any other areas that you are considering?

That home is priced at \$389,500. Is that the general price range you are interested in?

I can arrange to show this lovely home as well as another home that I think will interest you 5:00 pm today, or would 6:00 pm be more convenient for you?

Notice that the choice is the time, not whether they want to see the property. If your prospective caller indicates neither time is convenient, ask when it would be convenient to show the property.

If the caller indicates he is not free at all that day, say:

Let's set it up for tomorrow at 5:00 pm. I'll meet you and your spouse at my office. Our office is on the corner of Third Street and Lake Boulevard. You can't miss our orange sign.

Have you been prequalified for a loan? (If yes, "For how much?")

(If not), If you could come 15 minutes early, I can get you prequalified so in the event you wish to buy a home, the seller will be more likely to accept any offer you make. Can you come a little early?

If the caller doesn't object, you have a definite appointment. Whenever you have an appointment for the next day, call the prospects in the morning of that day to remind them of the appointment. When you call, be enthusiastic and tell them you have another property you feel they also will be interested in. This will reduce the no-shows. Never indicate you have another property if you don't have one.

Get more information from the caller than you give.

As you see, asking questions gives you control of the conversation. You get an appointment without giving out too much information and without undue delay and you have set the mood for buying not just looking.

By mentioning another house to Mr. or Mrs. Jones, you probably aroused some interest and set the stage for alternative properties, if necessary. Now say:

I will see you and [Mr./Mrs.] Jones at my office at 6:00 pm. Do you have a pencil and paper handy? Our office is at [1911 Elm Street across from the Security Bank]. Are you familiar with the area? [If not, give specific directions.] Again, my name is Howard Young. I look forward to seeing you.

Your question is about the caller's knowledge of your office location, not where you will meet the caller. You are telling, not asking for, the place of the meeting.

You can see from this sample script that the agent didn't really give information beyond what was in the ad. Instead, the agent asked for information. The call was kept very short and was ended as soon as an appointment had been set.

As we have stated, there are only two places to meet a prospective buyer for the first time. These are at the buyer's home or in the agent's office. Some agents like to visit the buyer's home to get a better insight into the buyer's lifestyle and needs, but the agent's office allows for an uninterrupted qualifying process controlled by the agent. If you are to meet the prospects at their residence, you should let someone in your office know where you are going and whom you are to meet. For safety reasons, you can also check if that person is a resident at that address. You can go to www.msn.intelius.com and click on "Reverse Lookup." Enter the address to get the occupants' names. If you must meet prospective buyers at their homes, you should complete the buyer financial qualifying process before you discuss properties. With wireless access to your MLS, you can go directly from the prospect's home to properties.

Getting a Caller's Name

In some offices, telephone calls are answered by a receptionist, who usually will get a caller's name for you. At times callers will, for one reason or another, resist giving their names. You will also encounter calls where caller ID is blocked. If there is resistance to giving a name, don't make an issue of it because there are a number of simple techniques you can use to get callers' names.

Let me put you on hold while I get some information that should interest you. In case we get disconnected, what is your telephone number so I can call you back?

If you get the telephone number, there should be no caller hesitancy in providing a name.

If the call results in an appointment, try the following:

In the unlikely event I get tied up for some reason, what is your home number so I can call you to reset the appointment?

Even though you may have the caller's name and number with your caller ID, you want the caller to give you the number. Callers who give you their number will probably also give their name if asked.

Another effective way to get callers' names owes its effectiveness to the fact that it is nonthreatening:

I have a flyer with a photo of that property, as well as information on several other properties, one in particular that I feel you will be interested in. Would it be all right if I prepared a packet of information and put it in the mail or emailed it to you?

If you offer sincere, knowledgeable assistance, this nonthreatening approach of sending the information will result in a positive response in 90% of cases in which prospects initially hesitate to give a name. Callers must now give you a name and an address or email address. Also ask if they would like to receive email alerts as to new listings as soon as they come on the market. Once you have prospects' names, they will provide the other information you need.

If you have not been able to obtain an appointment, the following approach can be very effective in keeping communications open:

I email pictures and details of new listings to prospective buyers who request them. These are sent out before the property is advertised. Are you interested in being alerted to new listings and having first chance?

Not every contact is a good contact. Reluctance to give a name is often a signal that the caller is not a serious buyer, but it could also mean that the caller is afraid of being harassed by overzealous salespeople. The call could be for information not related to buying, such as a call from a curious neighbor. Your greatest efforts should be directed toward callers who are open as to identity and needs rather

than those who are secretive. Your maximum efforts should be directed toward probabilities rather than remote possibilities.

“I Just Want the Address”

You will have callers who haven’t used the internet and want the address of the property so they can drive by for a quick look. Generally, the caller wants an exterior look to either eliminate the property from consideration or make a decision to view it. Unfortunately, a drive-by might eliminate you as well as the property from the caller’s consideration. As a response to such a request, consider:

Let me send you some interior photos of the house and back garden. The street view alone doesn’t do it justice. What is your email address?

If you are unable to get an appointment with callers and they still want the property address, it is good policy to get the callers’ name and telephone number before giving out the address. This is very important because should prospective buyers not be particularly interested in the property from a drive-by look, they would be lost to you for future contact. However, if you have a name and telephone number, you can encourage prospects to drive by the property and also note any other properties nearby with For Sale signs that appear interesting. Let the callers know you will call them back for their impressions of the property and to obtain information for them on other properties that appeared desirable.

Technology and Caller Data

WEB LINK



Technology has gone beyond caller ID where you only have the name and number of a caller. It is now possible to know where the caller lives, family size, and even financial data. This information is now available, not just for the calls you answer but also for calls that were unanswered because your line was busy or prospects called and failed to leave a message. If you desire information on such services, one service provider is www.callsource.com.

Locking In the Caller

After the appointment—keep the prospect off the phone.

When callers are motivated buyers, there is a good likelihood that they will continue looking through ads, as well as websites, and will contact other agents. You can’t do anything about calls made before prospective buyers called you, but it is relatively easy for you to keep them off the phone.

[Mrs. Smith], if you have the time, I would appreciate it if you could check our website at www.palmspringshomes.com and the classified ads and note any other properties that interest you. Bring the website information and the paper with you when we meet at [4 pm today], and I’ll be able to give you information on other properties. Perhaps you might want to see one or more of them. By having you check what interests you, I can also learn a great deal about what you desire and will be able to find the home you will want to own.

This keeps the possible buyer off the phone. It might possibly give you other property to show and provide information on the buyer’s desires.

Email Contacts

If you receive an email contact about a property on the web, you will likely also get a name, which allows you to call rather than email your response. It is easier to set up an appointment when in direct phone contact than it is by email. Contacts about a particular property shown on your website are premium contacts. Be prepared to close on an appointment to show the property.

Can't Get an Appointment

If you can't turn a call into an appointment, use it to set the stage for further contact.

Would it be all right if I called you or sent you an email should a property be listed that [has five bedrooms and is priced under \$400,000]?

This approach will generally result in a positive response and a name and telephone number if you have otherwise been unable to obtain this information.

Similarly, you could ask:

Would it be all right if I emailed you some information on other properties that I think might interest you?

This nonthreatening approach is likely to receive a positive response.

You should also ask the caller if it would be all right to add them to an email alert system through the MLS that will send them automated information of any new listings that you feel might interest the caller. It's a nonthreatening approach, and you now have a reason to call to discuss any email property you presented. Of course, you should again try to set up an appointment.

Internet Leads

Most buyers start their home search online and it is quite common practice for an interested party to make initial contact electronically rather than with a phone call. Therefore, these leads should be taken seriously.

The same rules apply with regard to internet leads as they apply to other leads. Here are some best practices with regard to handling internet inquiries:

1. Responsiveness is mandatory. In the age of instantaneous information, your prospects are used to getting fast responses to their inquiries. The buyer may be surfing many different websites, and often the most responsive agent is the one that will win.
2. Continuous follow-up is critical with web inquiries. Your prospects are not only on your website. They are visiting the sites of all your competitors as well as large area websites.

3. These buyers could be set up through an automatic drip system in the MLS. MLS systems are going to have a mechanism wherein the agent can input the criteria of the buyers and the system will automatically email them listings that match their search. This allows the agent to leverage the technology in the MLS without actually having to pull manual searches each day.

PREPARE FOR THE FIRST MEETING

Your Safety

Many times, the excitement of getting new clients and meeting them overshadows thoughts of individual safety.

1. Require 100% of all potential buyers to be preapproved by a lender before scheduling a tour. Remind your buyer that in the vast majority of cases, the preapproval process is done at no cost or obligation.
2. Always keep your customer in sight while on tour.
3. Let your office manager, receptionist, or another agent know where you are going to be and who you are going to show property to.
4. Have a plan of exit if you feel unsafe in any way.

Brokers should be able to add to the listed items based on local custom to tailor their own safety program for their sales staff.

Unfortunately, personal safety has become an issue in recent years. Agents have been attacked by people posing as “buyers.” To reduce jeopardizing your personal safety, meet prospective buyers at your office whenever possible. People who have anything on their minds other than a purchase will generally not want to show themselves to other people. After they come to your office and undergo a qualifying process, the likelihood of a safety problem will be significantly reduced.

Some agents ask to see photo identification to make certain the person is who he claims to be.

Some agents like to introduce prospects to other agents or their broker, as potential troublemakers won’t risk being exposed. Other safety precautions include notifying your office or voice mail of a change in a showing schedule, always leaving the front door of a dwelling unlocked during the showing, and having the prospect walk ahead of you. If you must meet a prospect for the first time at a property, you want to make certain an owner, tenant, or another agent from your office will be present.

Always let someone know where you are going. Some offices have a code. As an example, an agent could call an office and say, “Could you check the red file on 1250 North Main Street? I’m there now.” The words “red file” could be an alert for agents who feel they are in trouble.

Consider making yourself less attractive as a victim. Avoid ostentatious jewelry; a Gucci bag and/or Rolex watch may be signs of success, but they could also make you a target of opportunity. Stiletto heels or cowboy boots may be fashionable, but they may inhibit your ability to move quickly when required.

Many agents now carry pepper spray or safety devices that emit a loud piercing noise. A number of personal safety devices are on the market: Hootie emits a loud alarm, Birdie emits a blinding strobe light, Vipertek has a flashlight stun gun, and your smartphone has emergency numbers to use that indicate you are in trouble and provide GPS information.

Avoid parking in the driveway of the property you are showing. Besides showing disrespect for the property, you place yourself in a position where your car can be blocked in case of an emergency.

Never drive to a property in a client's vehicle. If the client insists on driving, take two vehicles.

Some agents take photos of clients and vehicles showing license plate numbers and email the photos to their office.

You lessen your personal danger by telling the prospect that someone else from your office will be arriving shortly.

Prepare to Meet the Prospective Buyer

Before you meet your prospective buyers for the first time, think through the qualifying process. You also might want to make some tentative appointments to show specific properties.

Schedule your first meeting with a prospective buyer at your office.

Because the qualifying process often reveals that properties inquired about do not really meet the needs, resources, or both of the prospective buyers, you want the owners to understand that the appointments are only tentative at this time and may need to be canceled or postponed.

Make certain you have a "qualifying room," free and clean, with fresh coffee or soft drinks available. We suggest you qualify prospective buyers in a separate office or closing room. This reduces distractions and provides a chance to learn about the prospects without interruption.

First Impressions

When you meet with prospective buyers, make a mental point of remembering their names. By repeating their last name several times to yourself and thinking of people you know with the same first names, you won't have to ask the buyers their names when writing an offer to purchase.

Make certain you are pronouncing names correctly. If you are uncertain, ask. Because people like to be addressed by their names, use them frequently during the discussions. Explain that you will be able to save the prospective buyers a

great deal of time by spending just a few minutes to decide what they really need in a home. Serve bottles of water or large cups of hot or iced coffee (or tea). Seat the clients close to you during your qualifying session because it gives you more control.

Needs and Interests

Keep in mind that the primary purpose of this meeting is for you to gain information. When you are talking, it should usually involve asking a question. People like people who are interested in them, and chances are they're not really interested in you. Their interest is in what you can do for them. To communicate effectively, you must ask **open-end questions** that require explanations and reasons rather than **closed-end questions** that can be answered with a simple "yes" or "no" but fail to inform you as to why. Ask about hobbies, special interests and pets. You could be wasting time in showing a house with a small backyard if the prospects own two Great Danes. Keep in mind that the only dumb question is the one you failed to ask.

Some agents use the FORD acronym as a guide to learning about their prospects:

- Family
- Occupation
- Recreation
- Dreams

Many agents use a qualification form so they won't forget the information prospective buyers give them. The use of a form also reduces the chances of forgetting to obtain some needed information. Figure 9.1 is an example of a form you might consider using. You can also put the information directly into your contact management system.

FIGURE 9.1: Prospective Buyer Confidential Information Sheet

Prospective Buyer Confidential Information Sheet

Name(s) _____ Phone no. _____

Fax no. _____ E-mail _____

Address _____

Size of family _____

Names and ages of children or other dependents living with you: _____

Pets _____

Initial contact with the firm was because of (advertisement, Web sites, sign, referral, etc.) _____

Present address _____

How long at above address? _____

Do you presently own your own home? _____

If yes, must you sell before you buy? _____

If yes, is your present home currently listed for sale? _____

With _____

How long has it been on the market? _____

Your reason for seeking to buy a new home _____

What features do you like about your present home? _____

What features don't you like about your present home? _____

What locations are of interest to you? _____

Why? _____

What feature(s) do you consider to be most important for your new home? _____

Why? _____

What are your hobbies or special interests? _____

Have you qualified for or been turned down for a home loan within the past year? _____

If you qualified for a loan, what was the name of the firm and loan amount? _____

How soon would you like to be in your new home? _____

Buyer Qualifying Process

The qualifying process is really a three-part process involving the following:

1. Needs and interests of the buyers
2. Buyers' motivation
3. Preapproval by an institutional lender

The form tells you the needs of buyers, as well as why they are buyers. Keep in mind that qualifying buyers is a continuing process leading right up to receiving an offer. By asking for reactions to homes shown, you gain insight into what prospective buyers really want. The reality could be far different from what a buyer claims to want. Your contact management systems should not only include the information you obtain about prospect needs and interests but also indicate the properties they have seen and their reactions to the showings.

A simple buyers-needs evaluation can be made by just having the buyers list the 10 most important features they want in their new home. Then have them rate the features in order of importance. This rating will help you in choosing homes to show, as well as in obtaining a purchase offer.

Financial qualifying. You should know FHA and VA loan limits and down payment requirements if your prospective buyers are likely to be eligible for these types of financing. You also should know down payment requirements for various types of loans.

You should have an in-depth understanding of current qualifying ratios being used by lenders in your area. You should also understand how the FHA and VA qualify purchasers.

Lenders use the terms *front-end* and *back-end ratios*. **Front-end ratio** customarily refers to the ratio of a buyer's housing costs to income. Generally, gross income is used for front-end qualifying. For many institutional lenders, the front-end ratio is 28%, which means the *buyers' total monthly housing costs (principal, interest, taxes, and insurance [PITI]) cannot exceed 28% of their gross income*.

$$\text{total monthly payment} \div \text{gross monthly income} = 28\% \text{ or less}$$

A person's total housing expense plus long-term debt obligations cannot exceed 36% of gross income (**back-end ratio**).

$$\begin{aligned} \text{PITI} + \text{total monthly credit obligations} &\div \text{gross monthly income} \\ &= 36\% \text{ or less} \end{aligned}$$

Qualifying ratios will be covered in more detail in Unit 12.

Down payment requirements vary by the lender and type of loan. Lenders express the loan-to-value ratio by the acronym **LTV**. If the borrower pays for private mortgage insurance, the down payments requirement may be reduced.

Self-employed individuals frequently have difficulty qualifying for loans. Lenders often require that self-employed buyers furnish two years of tax returns with their loan applications. Although buyers may indicate to you or the lender that they make X dollars a year, the tax returns may reveal a very different financial profile. Self-employed buyers may have to consider homes for which seller financing is

available, make a larger down payment, or be willing to pay a higher interest rate from a subprime lender.

The maximum loan for which they can qualify plus their down payment sets the maximum limit on housing that prospective buyers can purchase. Further details on financial qualification of buyers are included in Unit 12. Keep in mind that qualification ratios are not rigid. Lenders will make loans to individuals failing to meet qualification tactics when the type of loan, down payment, or interest rate is considered more favorable to the lender.

Start the lender financial qualification process before you leave to show homes to customers.

We recommend that you **prequalify** buyers or obtain lender preapproval whenever possible before you show properties. Failure to prequalify prospective buyers could result in showing the prospects homes they cannot afford. Besides resulting in wasted effort, it becomes difficult to sell the prospects less costly housing later.

By completing a prequalification online, you can get approval for a loan amount based on verification of given information.

You should be sending prequalification lending information to a lender you recommend before you leave your office to show a property. If you don't get an immediate answer, this is a reason for the prospective buyers to come back to your office after the showing. Also, by prequalifying a buyer, you have changed the buyers' attitude from looking to buying. Prequalifying buyers also reduces the likelihood that they will seek out other agents. Prequalifying buyers can make them your customers.

Should prospective buyers be reluctant to give financial information to you, have the prospects complete the computer loan qualification process themselves. They will be less reticent when providing the information directly to the lender.

Actual lender approval is based on more than income and expenses. Their credit score (**FICO score**) will determine if they will be given a loan, as well as the interest rate and down payment requirements.

Because of the mortgage crisis and its great many defaults, lenders are reluctant to lend to persons with any blemishes on their credit. You might have to consider lower-price homes so that the down payment available will be a larger percentage of the purchase price. Another possibility would be a lease option in which the buyers are lessees until they have enough equity to obtain financing.

If you handle the qualifying process in a professional manner, you will be setting the stage for the buyers to regard you as a professional and a person they can relate to. (Another advantage of financial qualifying is that you tend to eliminate "Lookie Lous.")

After the buyers' financial qualifying, it might become apparent that what the buyers indicate they need may not be possible based upon financial restrictions. Keep in mind what a buyer expresses as a need may be only a "want." The agent must not mislead buyers into believing they can fulfil a wish list when it is clearly not possible because of financial restrictions. Referring to property as a "starter

home” allows buyers to keep their perfect dream home alive but postpone it for the future.

As an alternative, you can point out that you will show property with the potential of fulfilling the buyers’ wishes through repair, renovation, or future expansion. Explain that their aspirations are within reach if they are able to visualize what a property can become.

Preparing the Buyer

During the financial qualification process, you discussed the down payment. Before you show property, you should discuss earnest money. Earnest money deposits are made with offers. Prospective buyers should understand that their check will be held uncashed until their offer is accepted. Ask a question that makes the prospective buyers visualize writing a check, such as the following:

If we are fortunate and find the perfect home for you today, would you be able to make a deposit of [\$] with your offer? Should we find the home that meets your needs, is there anything that would stop you from making a decision today?”

It is better to know about possible problems as soon as possible so that you can prepare to deal with them. It also lets the prospects anticipate buying rather than just looking.

You should explain to the prospects that with current low inventory and strong demand, homes sell quickly, so a delay in making a decision could mean a home for someone else. Also, there could be multiple offers on a home, in which case there could be a bidding war with a price above the listed price. Offers without contingencies will be a strong point in influencing sellers.

Give prospective buyers a copy of the purchase contract your office uses before you leave the office. Ask them to look the form over at their convenience and explain that when you succeed in finding them a home they wish to purchase, this will be the form used. Buyers who receive the form up front are less likely to object to the form later, and signing it will be an easier task.

What Happens to the Buyers’ Offer?

Buyers should understand that three things can happen when they make an offer:

1. Acceptance means that they have purchased a home.
2. A counteroffer from the owners gives the buyers the opportunity to accept it (and have the house), make their own counter to the counteroffer, or reject it.
3. Rejection of the offer means the entire earnest money deposit is returned to the offerors.

If you approach the qualifying process in an organized fashion, you should be able to start looking at homes less than an hour from the time prospective buyers arrive at your office.

Be certain to explain agencies and have your prospective buyers sign the agency form. (See Unit 3.) You should explain your disclosure obligations, as well as disclosures of the owner when buyers find a home that meets their needs.

You may decide that you can best serve your prospective buyer as a buyer's agent. If this is the case, you should discuss the benefits of exclusive buyer representation with your prospective buyers and obtain a buyer listing.

Importance of Qualifying Information

From your qualifying questions, you will have determined why the prospective buyers want to buy and if they can buy now. If they must sell a home first to become buyers, discuss an offer contingent on the sale of their own home should they find a house that meets their needs. If your prospects want to sell before they place an offer, you should still spend some time with them to whet their appetites for a new home. An advisable approach would be one showing session plus frequent phone calls about the progress of their own home sale and emails on new listings that you feel would be of interest.

If you know about a person's special interests, you can use this information in selecting homes for showing. As an example, if a prospective buyer indicates a strong interest in physical fitness, showing a house with a room that is used or could be used as a workout room would be a wise choice.

When the author first began in real estate sales, he showed a listing sight unseen. The prospective buyers, a well-dressed couple with a young daughter, stopped at the office after seeing an ad that indicated the home was located on a large wooded lot, and that it had seven rooms and a large garage-workshop. Because it was located in an excellent area, the potential buyers wanted to know if the listed price of the property, which was low, was a mistake. This untrained agent did everything wrong. He failed to get any qualifying information from the prospective buyers and was off to show a property he knew nothing about other than by reading a few lines on the office listing. Before he left the office, one of the other agents told him, "It's a dog. You'll never sell it!"

However, he discovered that the home was an old farmhouse with imitation brick, roll-asphalt siding, and the garage was a large machine shed/barn with a dirt floor. The pine floors in the house were covered with linoleum. There were no closets in the bedrooms, and because the house had been vacant for a long time, there was a very unpleasant odor throughout the place.

He asked the prospective buyers what they thought of the home. The response was, "It definitely has possibilities." Fifteen minutes later they signed an offer and within a month had moved into their new home. Because the father was a disabled veteran, this was the only home they could afford in this desirable school district. It was the answer to their dreams, but to other agents it was a dog. If this agent had previously viewed the property and understood the needs and abilities of the buyers, he would have realized the perfect match. There was nothing wrong

with the property; it simply needed to be matched with the right buyers. You should not substitute what *you* want for what *others* might want.

In selling, the ability to be a good listener is even more important than the ability to be a good talker. Unfortunately, many people have poor listening skills and pretend to listen, but do not hear. To add to the problem, the human mind can take in and process around 500 words a minute, yet we speak at a rate of only about 100 to 150 words a minute. The difference makes it easy to be distracted and allow your mind to wander. Practice active listening so you will be sure to hear words that are relevant to the customer's needs, problems, and solutions.

A good listener listens actively by reinforcing the speaker with words of understanding, repeating what was said (especially when objections arise), and nodding or making some show of approval.

Silence also is an excellent tool; when in doubt, the best solution is to keep silent. Discreet silence at the right time often shows an excellent command of the language. Also, active listeners do not interrupt or formulate a response when the speaker is talking.

Remember to Listen

Remember, you will not make sales by winning arguments. Speakers need the opportunity to make known their points and voice their feelings of doubt or displeasure. Listen with your eyes, as well as with your ears. Keep a relaxed tone while speaking, and mean what you say. When you are finished, stop.

In selecting property for showing, first consider properties from the internet that the prospective buyers have shown interest in. These properties can be half sold. If the buyers feel they discovered a property, the likelihood of a purchase is enhanced.

Agents must be careful to listen to buyers and choose properties for showing according to wishes and interests shown and not to substitute what the agent likes for what buyers express interest in.

Showing property priced significantly higher than the limits set by buyers when you don't fully realize their financial situation could be a disaster. You could sell buyers on a property or features they cannot obtain.

California is a more mobile society, so neighborhood is less important than in many Eastern communities where family and friends have been located within a small area for generations. When buyers insist on a designated area and their "want" list cannot be met based on their financial ability, consider first showing property within the area and then what a move outside the designated perimeter can achieve as to what they want in a home. "At Home with Diversity" classes sponsored by the National Association of REALTORS® teach REALTORS® how to work effectively with and within a rapidly changing multicultural market.

Chinese Buyers

There has been a significant influx of buyers from China. These buyers have been purchasing upscale homes, often for cash, in prestigious locations.

There are an estimated 5.3 million Chinese millionaires. The number is only exceeded by U.S. millionaires. Many Chinese are now seeking a safe place for their wealth, as well as a place for family safety and educational opportunities. A U.S. visa program (EB-5) allows wealthy aliens to obtain permanent residency in the United States if they invest \$500,000 to \$1 million in a U.S. investment that will create at least 10 jobs. The visa covers the investor's spouse as well as children under age 21. Some 80% of the EB-5 visas had been going to mainland China. Because the EB-5 program now limits issuance of the number of green cards each year to Chinese citizens, there is currently a long waiting list of Chinese applications. China has topped Canada in home purchase dollars. A 2017 NAR report indicates Chinese citizens top the list for foreign buyers of U.S. homes for the past three years. According to U.S. statistics, Chinese buyers purchased \$45 billion in U.S. real estate in the 12 months preceding March 2019. It is believed that approximately half of this investment has been in California, primarily in the greater Los Angeles area, San Francisco, and San Diego. Buyers have been seeking areas with substantial Chinese populations. Irvine, California, in Orange County has become a mecca for many Chinese buyers. Some subdivisions have reported over 50% of sales to Chinese nationals. Chinese investments declined in 2020 and 2021 due to the pandemic and because of restrictions about removing funds from China.

WEB LINK



The National Association of REALTORS® conducts a program on how to deal with buyers from all areas. The program leads to the designation Certified International Property Specialist. Find out more about this designation at <https://www.nar.realtor/education/designations-and-certifications/cips-designation>.

Feng Shui

Real estate agents should strive to understand the culture of diverse groups. Chinese buyers often rely heavily on opinions of friends and family members and may wish to consult with them before making a decision. A great many Chinese pay attention to feng shui in home purchase decisions. What you may consider the perfect home for a Chinese family could be rejected because of bad **feng shui**.

Feng shui (pronounced fung shway) translates as “wind-water” in English. It is an ancient Chinese practice to orient the energy of a dwelling. It positions objects and structure design for the favorable flow of chi, which is life force for good fortune.

Where a sale to a Chinese national is likely, some agents bring in a feng shui practitioner for an evaluation and hopeful approval. Fees for this service range from under \$200 to around \$400 depending on area and home size.

Feng shui consultants will offer solutions to correct problems with energy flow. Sometimes a solution can be simple for a property, but at times, the problem can be so severe that many Chinese buyers would not consider the property.

Some problem areas include the following:

- A backyard sloping down, which will take energy away from the house. It can be alleviated with a retaining wall to stop the downward energy flow.
- A T-junction house is considered bad feng shui because the chi coming directly down the road to the house is too aggressive and negatively affects the house.
- A south-facing unit is most preferred and east-facing is considered a bad omen although east-facing windows can create good energy.
- A clean line of sight from the front door to the back door allows good luck to come in and go right out. Minor alterations might solve the problem.
- A front door leading directly to a stairway will allow good energy to flow up or down the stairs to the detriment of the main floor.
- The front door must open inward, not outward which would push away positive energy.
- Trees and shrubs should not block the view of the front door because they would also block energy.
- Sharp corners emit negative energy.
- The bathroom door should not be close to the front door.
- Rooms should be clutter free because clutter resists the flow of positive energy (model homes).
- Work areas (home offices) should be separate from living areas.
- Plants, flowers, and water features are positive energy.

Colors are important to many Chinese buyers. Green is positive because it denotes nature. Yellow equals power, and red and purple are considered lucky.

Numbers are very important to many Chinese. Number 8 is the luckiest of Chinese numbers, while 4 and 14, 5 and 6 are to be avoided. The number 4 is unlucky because it is pronounced similarly to the Chinese word for death (sǐwáng).

To avoid the number 4, some agents will set a price, such as \$388,888, and a separate price for furnishings, such as \$88,888.

Street addresses are also important. Favorable addresses should be emphasized in advertising and in showings.

A basic understanding of feng shui will enable an agent to select homes for showing to Chinese buyers, as well as to consider how to counter possible problem areas.

Prospecting the China Market

China has a number of important home shows that feature foreign property. Beijing luxury property shows brought more than 5,200 wealthy Chinese to view international properties. A number of U.S. brokers have set up elaborate booths at the show. Foreign sellers indicate that setting up a booth at one of many property shows costs from \$30,000 to \$150,000. Brokers usually represent a new home development or a large condo development with many vacancies. Some brokers travel to China to sell business opportunities to allow Chinese families to obtain a visa. Others enter arrangements with Chinese real estate firms to locate buyers for business opportunities or luxury homes.

There are a number of Chinese real estate websites, some for foreign property. Juwai.com is a global property portal with 2.4 million properties listed in 58 countries.

PROPERTY TOUR PRESENTATION PACKAGE

WEB LINK



Just as presentation material can increase the effectiveness of a listing presentation, presentation material can make showings more effective. Material prepared for a buyer makes it easy for the buyer to evaluate and compare offerings and can lead to a natural closing. When you understand the buyer's needs and have prequalified the buyer, a property presentation package should be considered. Figure 9.2 from Realty Tools, Inc. (www.realtytools.com) show a sample buyer tour presentation package. You will note that each property presented includes property details, photographs, a map, and space for viewer's comments. The property comparison sheet shows what the buyers have indicated they are seeking.

THE SHOWING

Preparing to Show

To show property to prospective buyers intelligently, you must make adequate preparation:

- Know all available properties in the area
- Be able to identify school boundaries
- Be cognizant of shopping and recreational facilities in the area
- Be aware of public transportation routes
- Be aware of any other information about the area that might help prospects make a favorable decision

Select previously visited houses for viewing and consider the benefits offered by particular properties to particular buyers.

Don't show a property just to please the owners. Some agents try to show property to impress owners with their work on the owners' behalf rather than to make a sale. This tactic often backfires because prospective buyers will realize that you really aren't listening to them. Instead, you are wasting their time. This tactic

materially lessens the likelihood of having a second chance to show properties to these prospects. Don't give preference to your own office listings. What matters is the buyers' needs. By placing buyers' needs first, you are more likely to be successful.

Some agents try to hold back what they consider to be the best property for their prospects. Instead, they show overpriced or unsuitable property first. They believe the property they hope to sell will then appear in a more favorable light. This practice could be considered unethical because the result could be to give prospective buyers a false impression of property values. It is probably best to arrange showings by location to avoid wasting time backtracking.

Property Tour



Home Finders' Profile for

Neighborhood: Laurelford
 Fin SqFt: 5384
 Lot Size: 1.04
 Levels: 3
 Bathrooms: 3/1
 Roofing: Cedar/Shake
 Basement: Walkout Level
 Fuel: Electric
 Parking: Garage
 Extra Feat: Deck
 Sewer: Septic
 Amenities: Auto Gar Dr Opn
 Amenities: Mba/Sepp Shwr
 Other Rms: Family Room



Presenting

A map snippet showing the intersection of Highway 90 and Highway 63. Highway 90 runs vertically on the left, labeled "Highway 90". Highway 63 runs horizontally at the top, labeled "Highway 63". A road branches off Highway 90 towards the bottom right, passing through a shaded area labeled "Shawan Valley". Another road branches off Highway 63 towards the bottom right, also passing through the "Shawan Valley" area. The label "SHAWAN VALLEY" is placed between these two branching roads.



Presenting

[illegible]

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FIGURE 9.2: Property Tour Presentation Package (continued)


E.

Presenting

Features Include:


City: Cokesville
Neighborhood: Laurelford
Year Built: 1992
Fin SqFt: 5800
Lot Desc: Backs To Trees
Lot Size: 9 Acres
Style: Colonial
Levels: 3
Bedrooms: 4
Bathrooms: 2/1
Const: Vinyl
Roofing: Shingle
Basement: Full
Basement: Finished
Heat: Forced Air
Fuel: Electric
Cool: Central A/C
Parking: Garage
Garage Spaces: 2
Exter Feat: Balcony
Water: Well

20 Laurelford Ct
\$892,000




FULLY FINISHED WALK-OUT BASEMENT WITH REC ROOM (30X23), GUEST BEDROOM (18X17), FULL BATH & WINDOWS. THIS IS A FULL BASEMENT, 9 ACRES OF BEAUTIFUL GROUNDS, PARK-SETTING, UPPER 2ND LEVEL HAS 2 ROOMS (20X11 & 20X24) FULLY FINISHED. APPROX. 6,000 FINISHED SQUARE FEET. UNIQUE AND DISTINCTIVE. "

Comments:



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www.greenleafrealty.com


F.

Presenting

Features Include:


City: Cokesville
Neighborhood: Ivy Hill
Year Built: 1984
Fin SqFt: 4090
Lot Desc: Back To Woods
Lot Size: 1.89 Acres
Style: Classic
Levels: 3
Bedrooms: 4
Bathrooms: 3/2
Const: Cedar Siding
Roofing: Shingle/F-Glass
Basement: Unfinished
Basement: Walkout Level
Heat: Forced Air
Fuel: Bottled Propane
Cool: Ceiling Fan
Parking: Driveway
Garage Spaces: 3
Exter Feat: Patio
Water: Well

13213 Beaver Dam Rd
\$849,900




HANDCRAFTED OAK FOYER AND STAIRCASE. THE ATTENTION TO ARCHITECTURAL DETAIL IS OUTSTANDING. AMENITIES SUCH AS HARDWOODS, MARBLE, CERAMIC AND BRASS ADD THE FINISHING TOUCHES!"

Comments:



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G.

Presenting

Features Include:


City: Cokesville
Neighborhood: Laurelford
Year Built: 1996
Fin SqFt: 3862
Lot Desc: Backs To Trees
Lot Size: 1 Acre
Style: Modern
Levels: 3
Bedrooms: 4
Bathrooms: 2/2
Const: Brick
Roofing: Shingle/Asphalt
Basement: Full
Basement: Unfinished
Heat: Heat Pump
Fuel: Electric
Cool: Central A/C
Parking: Driveway
Garage Spaces: 3
Exter Feat: Balcony
Water: Conditioner

12218 Cleghorn Road
\$814,900




PARK-LIKE GROUNDS, MASTER BEDROOM SUITE WITH BALCONY, STAINED GLASS WINDOWS & LARGE FAMILY ROOM, WET BAR AND ATRIUM DOOR TO SIDE PORCH, LIVING ROOM WITH ATRIUM DOOR TO PATIO. LOTS OF WINDOWS, FLOORS HAVE BEEN REFINISHED. VERY CHARMING HOME WITH ELITE AMENITIES. "

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H.


Buyer Tour Map



Ref. #	Status	Address
1	Currently On The Market	13213 Beaver Dam Rd
2	Currently On The Market	12218 Cleghorn Road
3	Currently On The Market	20 Laurelford Ct
4	Currently On The Market	9 Jules Brentrony
5	Currently On The Market	2 Symphony Cir



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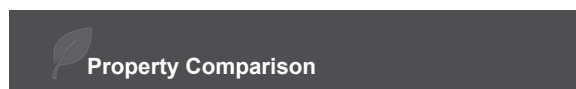
www.greenleafrealty.com

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FIGURE 9.2: Property Tour Presentation Package (continued)

I.



This report shows selected characteristics of each property in columns. Locate a feature in the left column and read across to compare the properties.

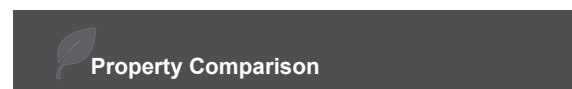
	13213 Beaver Dam Rd	12218 Cleghorn Road	20 Laurelford Ct	9 Jules Brentony
Desired Home Profile				
List Price	\$849,900	\$814,900	\$892,000	\$898,900
List SqFt	5208	5211	5154	5158
City	Hunt Valley	Cockeysville	Cockeysville	Hunt Valley
Neighborhood	Laurelford	Ivy Hill	Laurelford	Shawen
Year Built	1988	1984	1992	1995
Fin SqFt	5384	4090	3862	5800
Lot Desc	Backs To Trees	Back To Woods	Backs To Trees	Cul-De-Sac
Lot Size	1.04 Acres	1.89 Acr	1.9 Acres	3.05 Acr
Style	Colonial	Classic	Modern	Colonial
Levels	3	3	3	2
Bedrooms	4	4	4	4
Bathrooms	3/1	3/2	2/2	3/1
Const	Cedar Siding	Cedar Siding	Brick	Brick
Roofing	Cedar/Shake	Wood Shingle/F-Glass	Shingle/Asphalt	Shingle/Asphalt
Basement	Fully Finished	Unfinished	Full	Full
Heat	Heat Pump	Forced Air	Heat Pump	Forced Air
Fuel	Electric	Bottled Propane	Electric	Gas Heated
Cool	Central A/C	Central A/C	Central A/C	Central A/C
Parking	Garage	Driveway	Garage	Garage
Garage Spaces	2	3	3	2
Exter Feat	Deck	Patio	Balcony	Deck
Water	Well	Well	Well	Well
Sewer	Septic	Septic	Septic	Septic
# Fireplaces	2	0	1	2
Amenities	Auto Gar Dr Opn	Wet Bar/Bar	Wet Bar	Wood Floors
Amenities	Built-In Bookcases	Wood Floors	Game Room	Flue For Stove
Amenities	Master-Sp. Shw	W/W Carpeting	Driveway Roads	Walk-In Closet
Other Rms	Den/Study/LB	Atto-Unfinshd	Mud Room	In-Law Suite
Other Rms	Family Room	Family Room	Study/Library	Family Room



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J.



This report shows selected characteristics of each property in columns. Locate a feature in the left column and read across to compare the properties.

	13213 Beaver Dam Rd	12218 Cleghorn Road	20 Laurelford Ct	9 Jules Brentony	2 Symphony Cir
List Price	\$849,900	\$814,900	\$892,000	\$898,900	\$789,000
List SqFt	5208	5211	5154	5158	5144
City	Cockeysville	Cockeysville	Cockeysville	Hunt Valley	Cockeysville
Neighborhood	Ivy Hill	Laurelford	Laurelford	Shawen	Laurelford
Year Built	1984	1986	1992	1995	2008
Fin SqFt	4090	3862	5800	5684	5484
Lot Desc	Back To Woods	Backs To Trees	Backs To Trees	Cul-De-Sac	Backs To Trees
Lot Size	1.89 Acr	1.9 Acres	3.05 Acr	3.05 Acr	1.14 Acr
Style	Classic	Modern	Colonial	Colonial	Modern
Levels	3	3	3	2	3
Bedrooms	4	4	4	4	4
Bathrooms	3/2	2/2	3/1	3/1	3/1
Const	Cedar Siding	Brick	Brick	Brick	Cedar Siding
Roofing	Wood Shingle/F-Glass	Shingle/Asphalt	Shingle	Shingle/Asphalt	Cedar/Shake
Basement	Unfinished	Full	Full	Full	Finished
Heat	Forced Air	Heat Pump	Forced Air	Forced Air	Heat Pump
Fuel	Bottled Propane	Electric	Electric	Gas Heated	Electric
Cool	Central A/C	Central A/C	Central A/C	Central A/C	Central A/C
Parking	Driveway	Garage	Garage	Garage	2-Car Garage
Garage Spaces	3	3	2	2	2
Exter Feat	Patio	Balcony	Deck	Deck	Deck
Water	Well	Well	Well	Well	Well
Sewer	Septic	Septic	Septic	Septic	Septic
# Fireplaces	0	1	2	1	2
Amenities	Wet Bar/Bar	Wet Bar	Wood Floors	Walk-In Closet	Walk-In Closet
Amenities	Wood Floors	Game Room	Flue For Stove	Pool House	Wet Bar
Amenities	W/W Carpeting	Driveway Roads	Walk-In Closet	Wine Cellar	Home Warranty
Other Rms	Atto-Unfinshd	Mud Room	In-Law Suite	Mud Room	In-Law Suite
Other Rms	Family Room	Study/Library	Family Room	Family Room	Family Room



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If the qualifying process indicates that the homes you initially selected for viewing are unsuitable, cancel the appointments and make new ones before leaving your office. Try to show vacant homes on lockboxes first, so that you give owners time to prepare for a showing.

Some agents like to show no more than three or four properties. How many you show should be dictated by the situation. As an example, if buyers have flown into your area to buy a home because of a job transfer, then you want to continue to show them property until a selection can be made. You can keep confusion to a minimum when you show a large number of properties by giving them information sheets with photos of each house. You can break showings into groups of three or four. Take a coffee break after showing each group and discuss the comparative values of the homes. Find out which one of the group buyers liked best. If a clear winner does not appear, consider a second showing of the best home in each group.

Some agents like the idea of showing what they consider the best as their last scheduled showing. They feel that the first homes give the buyers a basis of comparison that allows the benefits of the final home to be fully appreciated. Other agents like to show what they regard as the best first so that other properties, as they are shown, can be compared to the first property.

Successful salespeople will generally show fewer properties per sale than less successful salespeople. Successful salespeople have a better understanding of their buyers and tend to be more selective in properties they show.

Robots for Property Showing

A few years ago, real estate agents would have been met with laughter for stating that **robots** would soon be showing property. It was regarded as science fiction.

Rex Real Estate uses a 5-foot-tall robot called REX on a platform with a sign ASK REX. The owner has an open house with REX doing most of the work. The robot can be programmed to answer over 75 likely questions a buyer may have about properties.

Zen Place, a San Francisco-based property management firm has a 3-foot-tall robot with an iPad mounted on top connected to a real estate agent. The robot will give a property tour using GPS to guide itself. Tours are available anytime during business hours. Potential tenants viewing Zen Place units can schedule a tour using their smartphones. Communications with an agent occur via a computer screen.

VirtualAPT uses a robot to make three-dimensional property website videos. The video takes any path the broker's voice directs. The units are not for sale. It is licensed and charges about 50 cents per square foot. Viewers can choose any path using VirtualAPT mapping and incorporate/respond to a number of languages. VirtualAPT has been effectively used to market central-city space to international renters and buyers.

Showing Techniques

Sell the neighborhood. Plan your route to sell the neighborhood. Choose the most scenic route, one that includes schools, public parks, golf courses, and shopping areas. If possible, adapt your route to the interests of the prospective buyers, but do not plan a route to avoid what you regard as a negative factor in the area. If you feel there is a negative element that might influence prospective buyers, this must be revealed to them. *However, the presence of a different racial or ethnic group in the area is not considered a negative factor and should not be revealed as if it were.* In fact, if you were to reveal this type of information, it might be regarded as racial steering, that is, directing people based on race. This is a violation of the Civil Rights Act of 1968.

Because people buy a neighborhood as much as they do a specific property, selling the neighborhood cannot be emphasized enough. While driving to the property, endeavor to educate the buyers by discussing only relevant items. If necessary, prepare leading questions. Try to keep the buyers' attention focused on houses of similar price and on the quality of the neighborhood itself. Point out recent sales of comparably priced homes. This should increase the buyers' trust in you and establish a price range in their minds.

A **negative motivation** technique that entails warning buyers about any problem feature often works well. Buyers build these features up in their minds and are relieved when they find a simple solution to a problem or don't perceive the feature as a problem. Also, avoid overenthusiasm on specific points; it may backfire. Instead, permit the buyers' discoveries to be new and exciting experiences.

When you arrive at the property, don't park in the owner's driveway. Park across the street from it if it has good curb appeal. If you pause for a moment when you get out of the car, your buyers will do the same. Ask for their opinion of the house and the area.

Another reason not to park in an owner's driveway is so you don't get blocked in by another vehicle. It also shows respect for the owner's property.

Create a favorable ambiance. It is interesting to note that although some buyers are interested in construction and utility, most are attracted by color, glamour, texture, and style. Don't bore prospects with details unless you are asked. Show a property for the emotional responses. Buyers usually purchase what they want and what they feel good about. Cater to these feelings by creating a favorable ambiance—proper mood and atmosphere. Have the owner provide fresh flowers in vases. Depending on the weather, either prepare the fireplace or have the air-conditioning operating. Encourage prospects to relax and feel at home.

You want prospective buyers to think like owners. Use language such as "[Jeffrey's school/Longview Middle School] is only three blocks away. Would you like to look at the school after we leave?" You should have ascertained in advance that Jeffrey would indeed be admitted to the school. In some areas, schools have had to limit new students.

If you are unable to answer a prospect's question and you promise to get the information, treat that promise as a priority. It shows you have regard for their concerns and gives you a reason for another contact.

Involve the whole family. Ask questions of all family members. If you are receiving positive vibrations from prospective buyers, consider "[Jennifer], which bedroom would be yours?" Remember that just because one member of the family is the most vocal does not mean that person is necessarily the decision maker.

Ask questions and listen to the answers.

Ask, don't tell, if you want to sell. The following story illustrates what to do and what not to do when you show property:

Mr. and Mrs. Doe are potential real estate buyers. They have decided to go for the traditional afternoon time killer, the Sunday drive. As they tour their town, complaining about the traffic, Mrs. Doe's face lights up when she sees a lovely home with lots of little flags flying. It is crisp, modern, and obviously open for inspection, so she decides that they should stop and look it over. They walk into the house and are greeted by a real estate salesperson, who puts down a comic book and slowly gets up. The salesperson then proceeds to give the demonstration—the cook's tour.

“This is the living room,” the salesperson proclaims with a sweep of the hand. “This is the dining room; notice the roominess. . . . This is the kitchen. These are the kitchen cabinets. This is the oven; it’s big and modern.” The salesperson continues, “Notice how wide the hall is. Why don’t you both look at this bedroom with me? Isn’t your husband interested in bedrooms? This is a closet.”

By this time, the couple has had enough. They remember how much they wanted a chocolate malt, and off they go. The salesperson returns to the comic book.

Now imagine the same scene with a different character—a professional salesperson who knows how to communicate:

This salesperson rises but waits to let the customers look around the living room for a moment. After introductions, she turns to Mrs. Doe and says, “Where in this living room would you place your sofa?” (Do not sell the space, sell the benefits of the space.)

In the kitchen, the salesperson opens a cabinet and says, “What would you put in here, dry groceries or your kitchen china?” Opening the oven, the salesperson says, “How big a turkey do you think this oven would take?”

True professionals never say, “This is the second bedroom.” They always ask, “Whose bedroom will this be?” A professional does not state obvious facts. A professional *sells* by asking who, what, where, or how for every room and every feature:

There’s plenty of room in the bedroom for a king-size bed plus an office area. Would you put the desk in the window alcove?

Mr. Thomas, how would you use this workroom?

Would you use this room as a study or as a spare bedroom?

How do you think your dog will like having her own trees in the fenced yard? Would you use the covered patio for summer entertaining?

The first minutes of entering a home can set the emotional stage for buying or forgetting the property. You want to get prospective buyers involved:

What do you like about this [house], [room]? What if anything would you change? Why?

Ask questions, don’t state opinions.

Sell benefits, not features. A pool is merely a hole in the ground with chlorinated water in it. The wise real estate salesperson remembers that the pool is, in fact, much more than this.

Imagine on a hot summer day, Mr. and Mrs. Jones, not having to trek the kids all the way down to the local recreation center to go swimming. You will be able to save gas and time by having the kids play right here in the backyard.

A gourmet kitchen is a place to indulge in one's culinary hobby, not to mention a pleasant atmosphere in which to work out tensions. A fireplace contributes to family togetherness and the kindling of romance. A dishwasher is not a luxury; it is a necessity, given the hectic demands on most people's time. A spa and sun deck promote an image of relaxed enjoyment, as well as being status symbols. Listen carefully to uncover features and benefits that are important to the buyer, as well as probing when appropriate, and then sell those features and benefits.

Because the qualifying process is a continual one, after each house shown you must *ask questions*, not *state opinions*. By asking questions about what prospective buyers liked and what they didn't like and probing for the reasons behind these feelings, you may find that your showing schedule needs modification.

Use tie-downs. A good communicator uses **tie-downs**, a question that calls for a positive response. They can be used to check out whether a benefit is important or to build a sense of ownership. No professional salesperson ever makes a positive statement without tying it down:

- "This is a spacious room, *isn't it?*"
- "You really need four bedrooms, *don't you?*"
- "Your children should be close to school, *shouldn't they?* "
- "This is the sound investment you've been looking for, *isn't it?* "

A series of yes responses can lead to the big YES!

These words—*isn't it*, *can it*, *won't it*, *don't you*, *can't you*, and so on—are powerful selling tools. Little yeses easily lead to the big yes. Sell on minor points.

Invite comparisons. The comparison technique gets buyers involved. Ask such questions as "Did you like the vanity off the bedroom, as it was in the house you just saw, or do you prefer this style?" "Will this dining room set off your antique hutch, or can you see it better in the other house?" These questions get the buyers involved in defining what is important to them. Buyers start selling themselves and get prepared to make the big decision by making a lot of little ones.

Tradeoffs. You must determine if a stated need is merely a want that can be met by a tradeoff. As an example, a prospective buyer might indicate the property has to have a basement. Asking, "How would you use your basement," might reveal the basement space was to be used as a workshop or even to house a pool table. You could proceed with a tradeoff:

- "If I found a house that met all your other requirements and with a huge garage with room for a workshop, would you want to see the property?"

You have accomplished separating the need from the function. The tradeoff works if you can provide the function.

Asking how a person would use a must-have feature or why it is important gives you the opportunity for a tradeoff and opens the person to consider more properties.

Negative to positive. You can turn a negative reaction into a positive for another property. As an example, a buyer says, “This house doesn’t have a family room. I need a family room.” If you’re not able to offer acceptable tradeoffs, you can say, “You really like this house, but because it doesn’t have a family room, you’re not considering purchasing it. Is that correct?” When you find a similar property with a family room, you can reply, “I’ve found the house for you. It’s similar to the other house you liked but this house has a family room.”

By use of comparisons you can discover preferences.

Additional showing tips. If you know that a property has a feature that the buyers will enjoy, don’t point it out to them. Let them discover that pool or large oak tree on their own. Here are other items that may enhance your presentation:

- Occasionally allow the buyers privacy. They may want to feel that they’re alone when they discuss personal things.
- Do not assume that just because you like a feature of the property, the buyers will like it as well.
- Do not resent the presence of a friend of the family. Use the friend as an ally.
- Always overcome any objections on the scene. If space is an issue, use a tape measure (let the customer measure). Try to settle any questions on the spot.
- Begin and end the tour of the home in the most beautiful and unique part of the house.
- The buyers will follow your lead. Whenever you enter a room, they will follow.
- Involve children. Wherever possible, direct questions to the children.
- Speak plainly, and avoid technical terms. When people do not understand, your point is lost.
- Call attention to outstanding features, but do not go overboard or you will close the door on the sale of another property.
- Show the rooms in the most productive order. In a home, this is usually front hall, living room, dining room, kitchen, bedrooms, yard or garden, and last of all the most attractive rooms on the first floor. This procedure may be varied to suit special cases.
- If the rooms are small, do not stand in the middle of a room; stand along the side.

When showing furnished property be aware that you have a duty of reasonable care as to the possessions of the occupant. Do not allow prospects to wander about out of your sight. Small expensive items can be a temptation for some people. While the listing agent should have advised owners to secure such objects, they don’t always do so and some owners fail to heed warnings.

Establishing a list. A valuable technique to use when showing property is to ask prospective buyers if they would want to include the property on their list for consideration. The list approach prepares the buyer for a purchase choice between several properties they have shown a degree of interest in. The choice you're seeking is which property they will buy, not a to-buy-or-not-to-buy decision.

The list can also be used as a closing technique: "This property meets nine out of 10 of the items on your list; you can't get much better than that."

An alternative showing technique. For vacant property, consider opening the door and telling the prospects to take their time and look around and that you will join them shortly.

When you join them, ask questions as to what they thought about particular features or what they like most about the property. By letting them view the property, they will be relaxed making their own decisions and able to privately discuss their feelings. This "on your own" showing technique is particularly effective when you feel that this is the property your prospective buyers will want. Because of security considerations as to the owners' property, don't use this technique when the property has owner furnishings without specific permission by the owner to do so.

Canned presentations. My first real sales job was selling Watkins Products door to door. I was 18 years old and working as part of a five-man crew. The crew chief worked with me for three days using an approach that seldom varied. He made sales. He gave me a written copy of his presentation from introduction to closing and told me to learn it and use it without trying to put my own spin on it or jazz it up.

Using his approach, I was successful. In fact, within two weeks I was the top salesperson in our crew. I learned the value of **canned presentations** that didn't get off track and worked toward a closing.

Most real estate professionals claim canned approaches are not feasible for real estate, but they are.

You can use canned answers to objections, canned methods to draw family members into your presentation as well as canned closings, closings that work. Although you must be relaxed in your presentation, you also must have the answers and language ready when required.

Multiple-prospect home tours. Home tours by bus or caravan are an effective tool to attract prospective buyers and can present competition that can stimulate buying decisions. Buyers do not feel threatened in situations when they are part of a group viewing property. They are more likely to go on a tour of homes than to contact a broker to view particular homes that may interest them.

Most brokers conducting tours require prospects to sign up in advance because space is limited. They also offer to prequalify or even preapprove buyers for loans at no cost or obligation. A call the day before the tour and a little “teaser” information about one property will reduce the number of “no shows.” You want a full tour because it can create a feeling of excitement and competition.

Some brokers will offer multiple tours featuring properties based on property type and/or price range. Some tours are limited to new home developments. Others may be limited to properties in foreclosure or short sales. Tours of foreclosed properties, as well as tours of fixer-uppers for flippers, have been very productive. Some brokers advertise the homes they show and the period of time they will be at each property, which allows prospects to go to just one or several of the homes to be viewed.

Providing clipboards with photos and data of each home and places for the prospects to make notes is effective in helping the buyers make their own decisions. With large groups, let the prospects view on their own.

During bus tours, a salesperson will then ask questions of the viewers as to each house after they have seen it. Often a problem raised by one person will be minimized by a solution offered by another viewer.

At the end of the tour, participants are asked to answer a brief questionnaire about the benefits of the tour and their feelings about the properties. Participants are asked if they would like to discuss any particular property or if they would like more information.

While offers are received on the day of the tour, especially when more than one prospect shows interest in the same property, other offers may take a few days. Many participants will sign up for additional tours.

Tours should be followed up with a telephone call.

Rules of Professional Conduct

The following rules help you maintain goodwill and a professional manner as you plan for and conduct showings:

- If you arrive at a property and notice that someone else is showing it, wait inconspicuously until the other salesperson and clients have left.
- When showing a home, leave it as you found it. If drapes were closed, see that they're closed when you leave. If inner doors were closed, close them when you leave. Double-check all outside doors to see that they're locked. Be sure to replace the key in the lockbox where you found it. If dogs, cats, or other animals are confined to a given room, yard, garage, and so forth, see that they do not gain access to other rooms or to the street.
- Notify the listing office immediately if something seems to be amiss at a property you have shown. Treat all listings as you would want to have your own listing treated.
- If a listing specifies "call first," never take a customer to the door and ask to show the home. If, while showing a property, you decide to show another and cannot reach the owner by phone, leave the client in the car while you go to the door and ask the owner for belated permission to show the property. Then abide by the owner's wishes.
- If a listing indicates that the property is to be shown only during certain hours or gives other information regarding particular conditions of showing, do not violate these requests. There must be a reason for them.
- Leave your business card at each property. It is a courtesy to the owner (whether at home or not). It also helps to advertise your own office. It is a good idea to write the date and the time on the back of the card.
- Interoffice courtesy requires that when calling another agency for information, you immediately identify yourself and your company.
- Do not enter a house with a lighted cigarette, pipe, or cigar, and do not light one while in a house. Be certain that prospective buyers also abide by these restrictions.
- Avoid making uncomplimentary remarks about a house, its condition, or its furnishings while in the house. The owner may be in the next room and be embarrassed or hurt by your comments.

Dealing With a Pandemic

While we hope the worst is in the past, we may have future periods of concern. You must protect yourself as well as those you are dealing with. When clients come to your office, remember masks and distancing. Have a supply of surgical masks for clients if needed. Give details about the property you are going to show. Then suggest the prospects travel separately and follow your vehicle. Keep distances in mind at all times and wear masks while viewing the property.

Virtual tours are a must and some properties will be sold without physical visiting. Open houses should be put on hold.

Provide hand sanitizer before entering property and limit showings to one agent and two buyers. No children should be allowed under the age of 18. Keep doors open during showings for ventilation.

It is strongly suggested you have parties sign the C.A.R. Form PEAD-V (Coronavirus Property Entry Advisory and Declaration – Visitor), which covers safety precautions that must be addressed. Besides masks, nothing is to be touched and no paper is allowed at the property, so no brochures or any papers to be signed. To avoid looky-loos at this critical time, we suggest buyers provide proof of funds and financing preapproval.

KEEP THEM YOURS

After you have completed your first session of showing homes to prospective buyers, it is a good idea to ask them to return to the office to discuss the properties they have seen. If a closing is not going to be possible, consider a way to tie down the prospects so they regard you as their agent. Consider the following approach:

I prefer to work with just a few buyers. I dedicate my efforts to finding them a property that best meets their needs. Usually, I'm able to meet the needs of my buyers in just a few weeks. I am willing to work for you and concentrate my efforts on your behalf if you are serious buyers. At times, buyers don't really have the down payment they say they have, or for some other reason are not in a position to buy. If I were able to show you a property that has everything you want, would you make an offer?

You want prospective buyers to feel an obligation to work with you.

Your buyers can be expected to assure you that they are serious and willing to make an offer. Continue:

If you are willing to let me take over the exclusive responsibility of finding the home you want, I will use my best efforts to locate the property that meets all your needs. If you see an ad or internet listing that interests you, if you drive by a home you like, or even if you see an open-house sign, call me about it. If other brokers contact you, tell them to call me and I will cooperate with them. If you are willing to work with me, I am willing to go all out for you. Does this seem fair?

The answer will usually be positive, and many people will live up to the agreement, but it would be better to bring out a buyer-agency agreement at this time. When you find the house that meets their needs, committed buyers will often feel obligated to make an offer when they might otherwise have procrastinated. If you want to act as a buyer's agent rather than a dual agent or seller's agent, now is a good time to obtain a buyer agent listing.

Video Streaming

You can show property to prospective renters or buyers without their being physically present. Using a smartphone, you can provide live-time viewing with apps such as Skype, Facetime, or Instagram Live. By coordinating viewing time, clients can see a live video feed as the agent uses a camera function to scan rooms and exterior features while talking to the client. The client can ask for close-ups or to return to a particular feature of the property. While some agents have reported receiving purchase offers online from the live feed, it has been particularly valuable

as to relocation rentals. Clients are willing to obligate to a one-year lease more readily than a half a million dollar purchase when they have not physically visited the property.

SUMMARY

Contacts often begin with a phone call. Be prepared for phone inquiries by having current listings, ads, switch property, and location of office listings readily available.

Prospects calling from a For Sale sign usually like the area and exterior; however, the price may not be suitable. Callers from ads are often suitable for switch property at a higher price. Callers from the internet like the appearance and price and are more likely to be purchasers of the property inquired about than callers from other sources.

Find out the names and addresses of callers, as well as their needs. Give minimum property information but extract the maximum information on callers' needs and motivations. By giving callers just enough information to keep their interest level high, you can obtain an appointment using a choice of time, not a choice between meeting and not meeting. By asking motivated prospective buyers to mark other ads that interest them, you can lock the prospects in and keep them from calling other agents.

In preparing to meet prospective buyers, you should have some tentative property-showing appointments and a qualifying plan. Before you show any property, you must ascertain prospects' needs, their motivation to buy, and their financial qualifications: the down payment they can afford and the maximum loan they can carry.

Personal security risks will be reduced by meeting prospects at your office and introducing them to your broker and other employees.

The motivation of prospects will affect the level of priority and energy that should be planned for prospective buyers. Based on prospects' needs and financial abilities, your selection of property for showing might need modification. Do not show prospective buyers properties they cannot afford.

Feng shui is the flow of energy and is of importance when dealing with Chinese buyers.

A property tour presentation package can help the buyer keep track of properties and evaluate them. It can lead naturally to a sale.

Plan your showings and ask questions. Don't give opinions during the showing process. Keep in mind that when you conduct a showing, you are selling benefits. Involve the entire family with your questions. The qualifying process should continue right to the point of sale.

Group tours can be effective in showing similar properties. Competitive situations can spark interest and encourage action.

By having buyers select properties for a list for consideration, they can further narrow their choices by property to buy or not buy.

CLASS DISCUSSION TOPICS

1. Role-play a phone inquiry about your own home based on a For Sale sign with another student. Your goal will be to obtain a name, address, basic needs, and a firm appointment.
2. Role-play a need and motivation buyer-qualification process with another student.
3. Role-play a showing of your classroom with another student cast as a prospective buyer of a classroom.
4. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. Callers from a For Sale sign are likely to be
 - a. satisfied with the area.
 - b. looking for a more expensive home.
 - c. satisfied with the general exterior appearance.
 - d. both a and c.
2. If we compare callers from internet postings with those from For Sale signs, in general,
 - a. callers from signs are more likely to end up buying homes that cost less than the home they called about.
 - b. callers from internet ads are more likely to end up buying homes that cost more than the home they called about.
 - c. both of these are true.
 - d. both of these are false.
3. Real estate professionals should
 - a. limit showing to their own listings.
 - b. show overpriced property first to make the one house seem a bargain.
 - c. avoid driving through nearby minority areas.
 - d. do none of these.
4. In showing property, you should
 - a. never show a prospect more than three homes in one day.
 - b. show prospects a really nice home they can't afford in order to keep up their interest.
 - c. never change your showing plans once you start.
 - d. do none of these.
5. The qualifying process includes discovering
 - a. the buyers' motivation.
 - b. the buyers' needs and interests.
 - c. a down payment they can make and the amount they can finance.
 - d. all of these.
6. The front-end loan-qualifying ratio is the ratio of
 - a. gross housing cost to gross income.
 - b. gross income to net income.
 - c. net housing cost to net income.
 - d. none of these.
7. The back-end qualifying ratio refers to the ratio of
 - a. gross housing cost to gross income.
 - b. total housing expense plus long-term debt to gross income.
 - c. gross income to net income plus housing cost.
 - d. none of these.

8. A good policy for a professional real estate salesperson would be to
 - a. meet new prospects at the nicest property you think will interest them.
 - b. avoid discussing financial matters until an offer is received.
 - c. ask open-ended questions of prospective buyers.
 - d. limit appointments to the showing of no more than two properties.
9. For personal safety concerns, you should
 - a. meet prospects at your office.
 - b. avoid ostentatious jewelry or accessories.
 - c. leave front doors unlocked at showing.
 - d. do all of these.
10. If another agent is showing a home when you arrive for a showing, what should you do?
 - a. Bring your prospects in and let them know they are competing with other buyers for the house
 - b. Cross the house off your showing list until you are sure it has not been sold
 - c. Wait inconspicuously until the other agent completes his or her showing and leaves
 - d. Tell your clients that you are certain that the other prospects are buyers so they had better act fast

10

UNIT TEN



OBTAINING THE OFFER AND CREATING THE SALES AGREEMENT

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- explain what selling is and how it is accomplished;
- describe how to obtain an offer to purchase, recognize buying signals, and deal with objections;
- list various closing techniques;
- explain and complete the California Residential Purchase Agreement and Joint Escrow Instructions; and
- estimate buyer costs.

KEY TERMS

assumptive close
buying motives
buying signals
California Residential
Purchase Agreement

and Joint Escrow
Instructions
estimated buyer's costs
fear of loss close
inducement
mirroring

narrative close
negative motivation
persuasion
positive choice
trial close

WHAT IS SELLING?

If all you accomplished in real estate was to escort people through houses, you would be a tour guide, not a salesperson. Selling is a noble profession because it helps others fulfill their needs and desires. As a salesperson, you influence the outcome of a showing. You influence prospective buyers to become owners by executing a real property purchase contract. Webster defines selling as “to induce others.” While in real estate we induce others to buy benefits, selling begins with uncovering client or customer needs and then working for those needs to be satisfied. In other words, salesmanship involves imparting knowledge, amplifying desire and showing how those desires can be fulfilled.

Selling Is Persuading

Persuasion is the central theme in many descriptions of the selling process:

- The personal or impersonal process of persuading prospective customers to buy a commodity or service
- The art of persuading people to accept or to follow certain ideas that lead them to a desired action
- Persuading people to want what you have in terms of products, services, or ideas

Unfortunately, the word *persuasion* reminds many people of someone who convinces them to buy unnecessary products. You can avoid this problem by understanding that people buy benefits that will satisfy their wants and needs, both conscious and unconscious. Your job is to address the needs and show your customers that satisfying *their* needs is most important to *you*. The good feelings that result will lead to long-term customer satisfaction and future business.

Selling Is Effective Communication

Without effective communication, there is no understanding. Know what you want to say; use listeners’ language. Do not use fancy or technical words when simple ones will do. Use the “KISS” method— **Keep It Simple and Sincere**.

A clear idea, sufficient facts, and proper media are of no avail if the communicator uses language that confuses the listener. Words should be chosen with the utmost care, organized, and delivered meaningfully. When you are dealing with parties who have limited English language skills, speak slowly and ask questions so you are certain you are being understood. Avoid using real estate terminology, such as Fannie Mae, or acronyms, such as MLS and FSBO.

For effective communication, Keep It Simple and Sincere!

Idea. The most common cause of poor communication is the communicator’s own failure to understand the idea he wants to express. You must have something to communicate. As a rule, if you are unsure about what you really mean or are lacking essential facts, it is best not to try to communicate your thoughts to others.

Facts. To make the sales message understood, you must provide sufficient facts. Without facts, the person receiving the message cannot form valid conclusions or take effective action. This is illustrated by the story of a temporary post office employee who was told to take a truck and deliver the New York mail. Six hours later, the department received a telephone call: “I’m out of gas on the New Jersey Turnpike, 11 miles out of New York. Can you wire me some money so I can deliver the mail?” What the boss had forgotten to tell the new employee was, “When we say deliver the New York mail, we mean to drive it two blocks to Union Station and leave it on the train platform.”

Receiver. Words or symbols have different meanings for different people. Assess your listener before attempting to communicate. Recognition of experience, mood, and temperament, as well as knowledge of the product or service, will make or break the communication chain.

Your Voice Personality

Does your selling voice communicate well? If not, the following four guidelines will help you relate to your customer more effectively:

1. Articulate clearly
2. Sound positive and friendly
3. Match your customer’s speech in volume, speed, and tone (this is sometimes called mirroring). Remember that just because someone speaks slowly, it doesn’t mean that person thinks slowly.
4. Use your customer’s descriptive words

Selling Is Discovering

Help your client or customer to discover. For example, ask, “Would it be all right if I ask you a few questions?” Evaluate your inquiry style by asking the following questions:

- Do my questions tell my prospect that I understand the client or customer?
- Do I ask property-oriented (fact-finding) questions?
- Do I follow this with people-oriented (feeling-finding) questions?
- Do I ask open-ended questions to get the other party to “open up”?

Open-ended questions ask for reasons and feelings.
Example: “Why do you want a three-car garage?”

In qualifying prospective buyers, use open-end questions to gain information rather than closed-end questions. Open-end questions ask for reasons and feelings and aid in the communication process, whereas closed-end questions can be answered with a simple “yes” or “no” that does not provide any background about reasoning and motivation. A child’s “Why?” is an example of an open-ended question. By asking questions like “Tell me...,” you invite the buyer’s participation. The buyer will feel more in control.

If you start with fact-finding questions, which appeal to reason, you accomplish the following three things:

1. You relax the prospect.
2. You indicate to the prospect that you have done your homework.
3. You obtain valuable information that helps guide your sales effort.

Then revert to feeling-finding questions, which appeal to emotions. Remember that people are more likely to buy the product or service if they feel that you understand them. By acknowledging the buyer's needs, you can establish a bond of empathy. You must show that you understand both the needs and the concerns of the buyer.

Give buyers a rational reason to fulfill an emotional need.

Customers' reasons for buying traditionally have been divided into two major categories: rational and emotional. *Rational motives* are usually defined as including any considerations that have to do with long-term costs, financing, and benefits from proposed expenditures. In other words, rational motives measure all the costs against all the probable gains. There are probably as many *emotional motives* for buying as there are customers. However, a few that are most frequently seen in real estate are love, fear, convenience, prestige or social approval, and self-improvement. Selling often involves giving a prospective buyer a rational reason for fulfilling an emotional need.

Selling Is Knowing Your Customer

Customers are the heart and soul of your business. Your customers do not have to love you but should like and trust you. It is a good idea for you to love your customers. Always keep in mind how you can best serve them.

Customer types. There have been numerous attempts to pigeonhole prospects and customers. This can be done if you keep in mind the temperamental fluctuations that might occur. Remember, no customer is a single type; each one is a composite of several types. Most experienced licensees have seen an individual display more than one temperament during an interview. Some customers put the salesperson on the defensive; some buyers waver; some are irritable, cynical, or good-humored. Alert salespeople adjust their approaches to the attitudes, temperaments, and buying needs of each customer. Figure 10.1 shows strategies for dealing with various types of prospects.

FIGURE 10.1: Types of Prospects

General Strategies to Use	
<i>Silent Prospect</i> —the “Clam”—Does not indicate whether she is agreeing or disagreeing	= Ask leading questions; be more personal than usual/
<i>Procrastinator</i> —the “Putter-Offer”—Does not know his own mind; has difficulty making up mind	= Summarize benefits that prospect will lose if he or she does not act; be positive, self-assured, and dramatic/
<i>Glad-Hander</i> —Talkative or overenthusiastic	= Lead these prospects back into the sale after letting them talk themselves out!
<i>Argumentative Type</i> —Usually is insincere and tries the salesperson's patience	= Sincerity and respect on the salesperson's part will create respect. Consider, “You're absolutely right. That's why you'll appreciate . . .”
<i>Slow or Methodical Type</i> —Appears to weigh every word of the salesperson	= Slow down and simplify details. Adjust your tempo to your prospect's. This approach is often called mirroring and can lead a sales prospect comfortably to a positive decision.
<i>Skeptical or Suspicious Type</i> —Convinced that every salesperson is trying to “pull the wool over her eyes”	= Stay with the facts, and be conservative in statements. Allay the prospect's fears.
<i>Overcautious or Timid Type</i> —Acts as if he does not trust the salesperson	= Take it slow and easy. Reassure on every point. Use logic and make it simple.
<i>Impulsive Type</i> —Apt to interrupt presentation before salesperson states all points	= Speed up presentation, concentrating only on important points. Omit details when possible.
<i>Opinionated—Ego Type</i> —Is overconfident, with strong opinions	= Give these prospects “rope” by appealing to their egos. Listen attentively and guide them, using their opinions.

Selling Is Knowing Your Product

If you are going to satisfy customer needs and wants, you must know what properties are available and their features. Taking a listing, preparing for a showing, going through the multiple listing service listings, and networking with others are all good opportunities for gathering this information. Knowledge and expertise are becoming even more important as consumers become more sophisticated. Several areas of knowledge about your product are discussed in the following paragraphs.

Features of properties include those of the community, as well as those of specific houses. For example, clients may want to know the following:

- Are there good schools nearby? (Private as well as public and specialty schools)
- Where is the nearest pickleball court?
- What are the neighborhood amenities?

Because it is difficult to know everything about every community, many salespeople begin by specializing in a specific geographic area. Often, this market area includes the neighborhoods in which you will do the most business. It will serve you well to get involved in these communities, get to know the neighborhood, and keep up with changes.

The brokerage firm, you, and the services you provide also are part of the product. Unanswered questions and objections raised in these areas can kill a sale. Early in your relationship with your clients or prospects, present information that will establish your credibility and show them that you have the resources to work hard for them. Some agents hand out fact sheets or a résumé. An anecdote about a way in which you and the firm have benefited others may help you establish rapport and provide reassurance if the situation seems appropriate:

“There are advantages and disadvantages to this property,” said the honest and well-informed real estate agent. “To the north is the gas works, to the east the glue factory, to the south a fish and chips shop, and to the west a sewage farm. These are the disadvantages.”

“What are the advantages?” the customer asked.

“You can always tell which way the wind is blowing,” was the agent’s reply. As this anecdote humorously illustrates, you often can present disadvantages as advantages.

Because it is unlikely that a piece of property will have every feature a client wants, it makes sense to play up the significant features and downplay the ones that are lacking. However, be meticulous about disclosure issues. Do not neglect or change the presentation of negative information just because it is (or may be perceived as) a disadvantage. Both legally and morally, you owe each client a high standard of care—a quality of service that a “reasonably prudent person” would provide. Since the *Easton v. Strassburger* case, awareness of responsibilities has become a prime concern in the real estate profession.

Selling Is You

You should present a calm rational persona. You must show a desire to understand needs and to help in their fulfillment. If you appear to be trying too hard, buyers are likely to become nervous or defensive, or both. You want to be a person whom the buyers like and trust. You can be that person and it will lead to success.

There will be times when you are not the person who can best serve a particular client. Perhaps the client is looking for a home that lies outside your market area. Or, someone may want a piece of investment property that will involve intricate tax and financing complications. The worst mistake you can make is thinking that you can serve everyone. It is far better to refer people to brokers or other individuals who have the required expertise. Even if you do refer a prospect to another agent, it would be ethical and legal to earn a referral fee from the other agent after the transaction has reached a successful close.

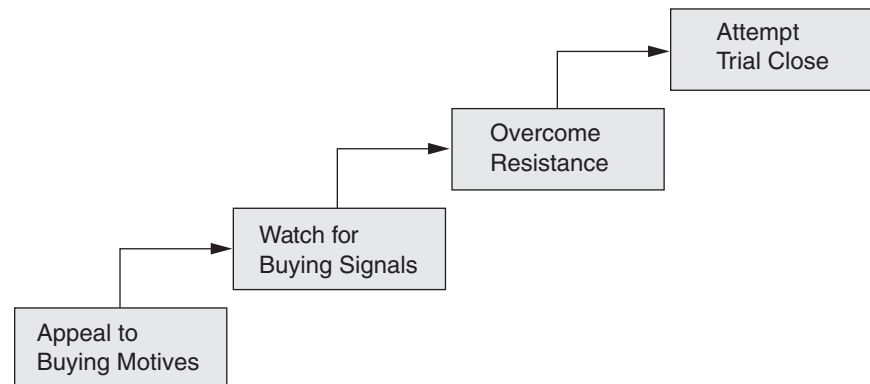
OBTAINING THE OFFER

Closing is simply asking for a decision.

To narrow the number of homes shown for a purchase decision, some brokers create a list. When you show a number of properties to clients, the list approach should be considered. It is a logical approach to selling. After each showing, ask the clients what they liked about the property and what they considered negatives. Then ask if the property should be added to their list for consideration. After you have three or more properties on the list, go over the pluses and minuses of the properties and let the clients tell you which properties they feel they like best. Do not be assertive and try to influence this final decision. Your personal likes and dislikes could turn a decision into no decision at all. Once they have made their choice, ask whether they would like to put an offer on the property. Selling becomes a matter of showing the prospects how and why it should be their home.

In striving to obtain an offer to purchase, you will find that each transaction is unique and has its own approach and required motivation. However, there are some general principles to apply. Understanding why customers buy and the basic steps of transactions help you prepare for a presentation that will lead to an offer. Four basic steps are illustrated in Figure 10.2. They are discussed in the following paragraphs.

FIGURE 10.2: Steps in Obtaining the Offer



Appeal to Buying Motives

Merriam-Webster's Collegiate Dictionary defines *motive* as “something (as a need or desire) that causes a person to act.” Understanding a buyer’s needs and wants is absolutely essential for optimum results. Remember, you are going to be selling the benefits that match those needs and wants. After all, why should an individual buy a home and be responsible for its maintenance, taxes, and so on, rather than rent for life? Why should a family skimp and save for a down payment and make monthly payments when that family could live in a public housing unit or with relatives?

Ownership of real property satisfies several basic needs or **buying motives**.

Survival. The most basic human need is survival. If a home has no amenities other than providing shelter, it satisfies the basic human need to survive.

Security. The desire for security is a fundamental need that has many applications in the selling process. Every licensee should appeal to it. The home historically has become the principal financial asset of many Americans. In times of financial stress, the home might be something to fall back on. People feel secure in their own homes. They do not have to worry about landlords asking them to leave because the landlords want their own children to live there.

Pride of ownership/social need. Once buyers obtain basic shelter, pride impels many to pay considerably more for additional benefits. What they feel their friends and/or family will think of the home influences many buyers. By a statement such as “Wouldn’t you like to entertain your friends on this delightful patio?” you can create an image of pride in showing the home to others. Many salespeople use pride of ownership immediately by referring to the property being shown as if the prospective buyers were already the owners. Pride of ownership appeal is not limited to luxury estates. It can be used for all types of properties because most buyers are looking at properties with better amenities than they currently enjoy.

Love of family. Desirable school areas, recreational facilities, shopping conveniences, or other factors that may appeal to one or all members of the family often induce the purchase of a certain property. Many times, one of the foremost factors in the buyer’s mind will be how the home can help the family. Don’t forget that in many families, pets are regarded as important family members.

Health. Motivation arising from health interests is closely allied to the survival instinct and can be a determining factor in a decision to buy. The quality of the environment—of the air and water, lower noise levels, the avoidance of urban congestion—often motivates a decision to buy.

Desire for profit or gain (investment). More people have started on the road to financial independence through home ownership than in any other way. Buying a home can be an investment for the future because well-located properties in the long run increase in value, a process called *appreciation*. The amount of appreciation depends on numerous factors, such as the demand for housing in the area, the supply of homes, the availability of good financing, and the area’s economy. While we have seen periods of sharp declines in value in the past, property values in California historically have tended to increase an average of more than 3% a year beyond the rate of inflation. Home ownership is still likely to be the best investment or savings program the average family will ever have.

Tax benefits. Home ownership, as well as second-home ownership, offers significant tax advantages that influence many buyers. The deductibility of property taxes and interest means that true costs can be significantly less than they appear. Because of the 2017 tax reform, the increase in the standard deduction and limitations on tax deductions, the number of buyers who are able to benefit from these deductions has been limited. The special tax exemptions available for gains on the

sale of primary residences is of significant benefit for homeowners who sell homes that have appreciated in value. (See Unit 14.)

Comfort and convenience. The human drive for comfort and convenience has less influence than some of the other, previously mentioned factors. When basic needs have been fulfilled, however, these may be considered an added dimension.

Reason versus emotion. *Logic* makes people think, or reason. *Emotion* makes them act. Potential buyers may decide logically that a property is suited for them, but they may not act because the property does not trigger an emotional response. *In most situations, buyers do not buy simply from need, they buy what they want.* While sellers tend to sell based on logic, buyers generally buy based on emotion. The successful salesperson probes to find the buyers' desires that, when satisfied, will trigger their motivation to buy. This is why communication is so important. What a buyer says he or she wants is likely to be based on reason; what the buyer really wants may be based more on emotion than on reason. If you pay attention while showing a house, you can determine the emotional needs of the buyer and select properties to show that meet those needs. You can gain an understanding of which of several properties a buyer actually wants by questions such as "If these properties were priced identically, which property would you prefer?" Follow this up with, "Why?" By listening, you can offer knowledgeable assistance based on experience of other buyers your buyers can relate to. It is much easier to sell buyers a property that appeals to their emotions than one that appears sensible for them.

The author once showed a prospective buyer a luxury home. He could easily afford it but hesitated spending the money because he didn't need that fine a home. Giving the buyer a rational reason to buy resulted in a sale: "It's more than a home, it's an investment, and you don't have to wait to sell it to realize the appreciation. A great many homeowners have sent their children through college by refinancing their homes or using a home equity line of credit." Buyers are usually often receptive to even weak rational reasons to buy property that appeals to their emotions.

Sensory appeal. People learn about the surrounding world through their senses, which include sound, sight, smell, taste, and touch. You can enhance your presentation by employing all the senses and by emphasizing the benefits that can be appreciated by various senses.

In appealing to the sense of *sight*, point out the restful and interesting views from the windows, the lush lawns, the lines of the house, the ample wall space. Be careful not to go overboard about certain colors; they may be your choice but not the buyer's.

The appeal of *sound* may be either its absence or its presence—perhaps it will be music, man-made or natural, to a buyer's ears. Where possible, call attention to the sound made by the ocean, a lake, a babbling brook, or birds. Also, make buyers aware that machinery in the house, such as air conditioners, water closets, and power switches, operate quietly.

To appeal to buyers' sense of *smell*, call attention to the fresh air, flower scents, or, if possible, the smell of cedar from closets or chests.

The sense of *taste* might be appealed to by testing the flavor of well water, vegetables from the garden, or fruit from the trees. If you know there is ripe fruit in the yard, an excellent technique is to bring a pen knife with you and offer a slice of fruit to the prospective buyers.

Appeal to the sense of *touch* by touching the carpeting, knocking on the solid wood paneling, or breaking up a lump of garden soil in your hand. Your prospects will likely do the same. By touching, they come a little closer to ownership.

Negative motivation. Negative motivation applies to knowing what someone does *not* want. There are many things we do not want: pain, hunger, fatigue, worry, strife, just to mention a few. Negative motivation can be more immediate and real to a person than positive motivation. People seem to know what they do not want better than what they do want.

To avoid a fruitless, time-wasting search, the salesperson should endeavor to learn buyers' negative motivations as well as the positive ones. Some disadvantages of home ownership are described in Figure 10.3: large initial investment, risk, increased expenses, restricted mobility, a low level of liquidity, and greater responsibility. If a buyer does not want something, the absence or mitigation of this perceived negative becomes a strong positive factor for a sale.

FIGURE 10.3: Disadvantages of Home Ownership

- Large initial investment: Normally, buying a home requires a down payment of 5% to 20% of the purchase price, with the exception of VA loans, some FHA loans, and loans involving secondary financing or high rates of interest. This means the purchase price of a \$400,000 home may require a down payment of \$20,000 to \$80,000. In addition, the closing costs could well be from \$4,000 to \$10,000.
- Risk: Whenever customers invest money, they risk losing some or all of it. Changes in market conditions can affect value. However, well-located properties kept in good condition offer less risk over the long term than most other investment choices.
- Increase in expenses: Although mortgage payments remain constant in the case of fixed-rate loans, other costs may increase. Property taxes and utility costs creep upward. Maintenance costs increase as the home ages. Adjustable-rate loans could have an increase in interest and payments. Buyers have to weigh some of these increased costs against the advantages of ownership, but they should remember that rents also increase.
- Restricted mobility: To a degree, people are less mobile once they have bought a home. However, houses can be sold or rented out by the owner.
- Lack of liquidity: Some say they dislike home ownership because their investment is not liquid. While an investment in a home is not as liquid as having money in the bank, homeowners can use their property as a source of cash. For example, homeowners might consider borrowing on the property by taking out a home equity loan. Or they could refinance the first mortgage once sufficient equity has been developed.
- Greater responsibility: An investment in real property has responsibilities. Buyers must maintain the property properly. For example, they may have to climb a ladder to paint or call a painter and pay the bill. The lawn needs to be watered and cut to protect the investment.

Watch for Buying Signals

In many situations and at various psychological moments during your presentation, prospects may signal that they are ready to buy. These **buying signals**—some action, word or phrase, or facial expression of buyers—are tip-offs to the salesperson. A buying signal says, “I’m ready to talk terms if you are.” These signals are green lights. After prospects have exhibited a buying signal, follow up the opportunity with a closing statement.

Actions. You are making a presentation, and the prospects stay mum. They do not even grunt. You start to wonder if you are talking their language. Suddenly, one of them picks up the deposit receipt and reads a clause or two. Stop your presentation and swing into your close—they are interested. Prospects also are signaling when they return to an upstairs room for a second look or to measure a room. They are envisioning their placement of furniture. If prospects seem reluctant to leave the room or the property or inspect minute details, it shows positive interest. These actions will often mean “I’m ready to buy.”

Words. Obvious buying signals would be statements such as “This is great!” “Kevin would love this back bedroom,” or “I especially like the low maintenance.” Even an objection or an expression of resistance can spell a buying signal: “Don’t you think the price is a little too high?” The alert salesperson hears it as a signal, because it shows that the buyer actually is thinking about the purchase. Other possible signals occur if a buyer

- asks the salesperson to go over the financing details again,
- inquires about possession time,
- requests information about closing costs,
- starts to whisper with a spouse, or
- makes a statement as to a positive aspect of the property.

Negative statements can be a signal to buy. A complaint about price could instead mean an offer at a lesser price is imminent. Complaining about problems that can be readily solved, coupled with a reluctance to leave the property, could be a buying tactic to justify a lower offer.

Body language. A salesperson who is not watching customers carefully may easily miss facial-expression signals. Prospects smiling as you make your presentation or nodding at each other are positive signals. A prospect sitting back in the chair and then leaning forward as you make your sales presentation is a sign of interest. Meeting your eye contact, as well as showing signs of relaxing, are also positive indicators.

Overcome Resistance

To obtain the offer, be prepared to answer any objections raised by the buyer. Buyer resistance will vary with each transaction. Typical objections might include some of the following statements:

- “The price is too high.”
- “The water pressure is too low.”
- “The rooms are too small.”
- “The taxes are too high.”
- “I can’t buy until I sell.”
- “I can’t get occupancy soon enough.”
- “I’ll never get my kids into that school.”

Human nature being what it is, some salespeople feel they must conquer objections by crushing them decisively. It is an unfortunate truth that many salespeople feel they must treat objections as barriers raised to block them from their goal—the sale or the offer. They see an objection as being in direct conflict with their best interests, and therefore they fear it and wish to combat it quickly.

In contrast to this, you should treat an objection as a prelude to a sale, a natural part of any sales routine. Objections may occur while showing the house or in your office before signing the offer. Before proceeding to your counterattack, determine two things in your own mind:

1. Is it really an objection or just a comment?
2. Is it an objection you can and should do something about?

There are ways to handle real objections. Five basic steps to be used in meeting objections are shown in Figure 10.4. Carefully following these steps leads to obtaining the offer and closing the sale.

When buyers are hesitant, ask a simple question or two:

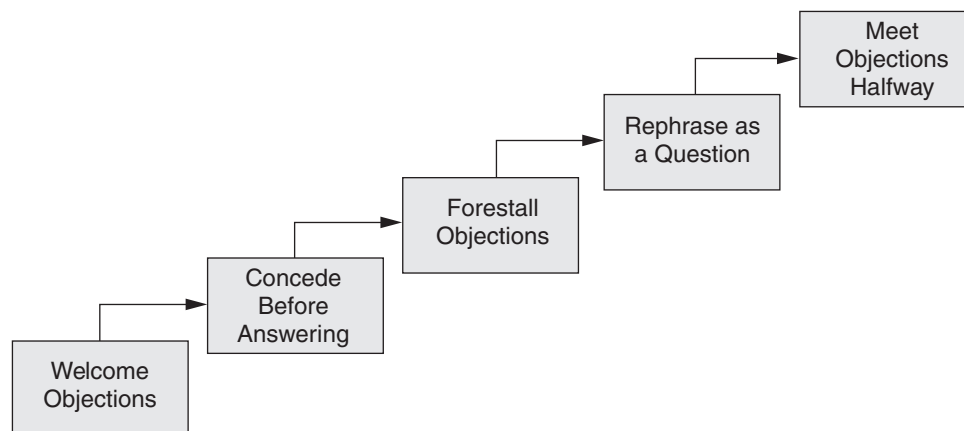
What if anything would keep you from buying this house?

How could you overcome this?

If a buyer responds with a solution, you should have an offer.

Welcome objections. An objection means that you have an interested buyer who has a concern. When you fail to get objections, it could mean that your prospect is not a serious buyer. Do not fear objections; welcome them. Encourage prospects to tell you what is on their minds. Objections help focus your talk on what matters to the prospect. They may be the prospect’s way of asking for more information. They may throw some light on the prospect’s thinking.

FIGURE 10.4: Meeting a Buyer's Objections



You can't overcome objections if you don't know what they are.

If the buyers can solve their own objections, you are on the path to a sale.

Concede before answering. To avoid putting the buyers on the defensive, recognize legitimate concerns. Never tell buyers who have a legitimate objection that their position is somehow not valid or less than true. This immediately creates confrontation. You might make a comment such as one of these: "Other clients have felt the same way in the past, but what they have found is that . . .," "I can appreciate your concerns," or "I understand how you feel."

Rephrase an objection as a question. The buyer might say, "I don't like tract houses," to which you could reply, "As I understand it then, Mr. and Mrs. Buyer, your question is this: 'Am I better off buying a smaller custom home in a less desirable neighborhood for the same money or would I gain greater enjoyment by owning this larger home with more amenities in a great neighborhood?'" Try to restate objections as questions. Doing so shows the buyers that you are working together and that you are most concerned with helping them.

Similarly:

I don't like the color of this room

If this were your house, what color would you paint it?

Do you think [one] gallon of paint would cover it?

What you have done is minimize the objection and the prospective buyers have solved their own objection.

If a prospective buyer objects to a price, your first question should be, "What do you feel would be a fair price for this property?" If the buyer replies with a price, your response could be, "How did you arrive at that price?" Listen attentively. You could correct misconceptions and justify what you feel is a fair price, or you could state, "While I think your price is a little low, let's try it. If the owners accept, I think you'll have made a really advantageous purchase."

Meet objections halfway. A well-known technique for answering objections is the “Yes, but . . .” technique. This technique meets objections halfway. The objection may be, “This is the smallest bedroom I’ve ever seen.” The licensee could answer, “Yes, Ms. Buyer, you’re right, that is a small bedroom, and I imagine it was intended for a young person. If this were your house, whose bedroom would this be?” You could then continue, “How would you furnish this room for your [son/daughter]?” If buyers can solve their own objections, you have gone a long way toward making a sale.

Forestall objections. Your experience tells you to expect certain objections from your prospect. Bring up these potential objections before the prospect does. This is known as *forestalling* or *anticipating the objection*. Its effect is to reduce the objection’s importance and to show the prospect that you do not fear it. “It could use a new coat of paint. Do you think 10 gallons would do the job?”

When you don’t know. If you don’t know the answer to a question, never guess. It is better to say you don’t know than to fabricate an answer you are unsure of. Consider this example:

“That’s a good question, I’ll get the answer for you by_____.”

Answering a question with a question. You must handle questions as well as objections. One way to answer a question from a buyer is to use a “hook.” This is the technique of answering a question with a question. It prolongs the sales interview and keeps the buyer in the act. Three examples are these:

1. **Question:** Will the sellers agree to an April 1 closing?

2. **Wrong answer:** I’m pretty sure they will.

Using a hook: Do you want an April 1 closing?

3. **Question:** Will the sellers consider a lower offer?

4. **Wrong answer:** Yes, they’ve indicated they might listen to an offer.

Using a hook: How much are you prepared to offer? (If you feel the figure is unreasonable, you should use it as a starting point and attempt to write a more reasonable offer. If you are a buyer’s agent, then you should be recommending an offer price and be prepared to justify it.)

5. **Question:** Is the stove (refrigerator, drapery, carpeting) included?

6. **Wrong answer:** I’ll ask the seller.

Using a hook: Do you want the stove (refrigerator, drapery, carpeting) included?

While these using-a-hook answers imply that the prospect will buy, many agents prefer a nail-down approach: “If _____, would you buy this property?” They have asked for something and the agent is asking, “If you got it, would you buy?”

Listen and minimize. When the property meets most of the buyer's expressed needs, you can summarize benefits and attempt to minimize or overcome the objections. As an example:

This property is nearly perfect for your family.

- It is located in the Newport school district that you indicated you desired.
- It has the formal dining room you said was essential.
- It has the sunlit patio off the kitchen that you liked in the first house I showed you.
- Its size meets all your requirements: 3 bedrooms, 2½ baths, and a 3-car garage.
- The price falls within the guidelines you indicated.
- The condition, I am sure you will agree, is pristine.
- Is my analysis correct except that you don't like the tile in the kitchen and bath and that the light fixture in the dining room is way too small?

If the owner agrees with your analysis, you have emphasized the positive features and exposed the negative features in a way that tends to make them manageable. You might want to continue with, "What do you think it would cost to . . .?" You could then say, "I think an offer for this property would make sense, don't you agree?"

Attempt a Trial Close

If a salesperson successfully builds each part of the sale throughout the presentation, the close will come easily. In many cases, the buyer's reaction says, "I'm ready to make an offer." There is a psychological moment for a **trial close**, but it varies with each transaction.

With a trial close, you get the buyers to agree to something that indicates they are willing to buy.

Attempting a trial close often is called "test and heat." To close any sale and get the buyers' signatures on the deposit receipt, do what your great-grandmother did with the old-fashioned flatiron—test and heat. If the customer is not ready to buy, add a little "heat." This means that you present new evidence or reiterate key sales points and try again.

Beginning with the first interview, the salesperson must build for this moment during every phase of the sale, because the buyer may make a decision at any time. Although all situations and all buyers are different, the following six basic closing principles can be set forth:

- Throughout the sale, use "you" and "yours" or the customers' name
- Obtain agreement on a variety of things throughout the interview
- Tell a complete story in terms of a customer's buying motives; turn the features into personal benefits and hold some talking points in reserve
- Watch for buying signals

- Say, “Let’s go back to the office and see what it looks like on paper”
- Ask for their signatures if they do not volunteer to sign

Closing Techniques

Six basic closing techniques often are employed: the assumptive close, the positive choice, inducement, fear of loss, narrative, and asking for the deposit. Of course, there are hundreds of variations on these closing techniques.

Assumptive close (physical action close). In an **assumptive close**, you assume the buyer is going to buy and you complete the deposit receipt form. This close is a natural follow-through when a buyer flashes a buying-signal question such as “Can I get possession by July 1?” You should respond, “Would you like possession by July 1? We can certainly ask for it . . .”

Other assumptive closings to consider when you are getting a positive feedback include the following:

Does 30 days for closing meet your needs? (If the answer is affirmative or another date is given, you should be writing this offer.)

The property is listed at [\$], but you as the buyer decide what you wish to offer. Would you want to offer [\$] and be sure you have this home, or would you want to offer a different amount? (If you are a buyer’s agent, you should suggest an offer price and be prepared to justify the price with comparables.)

I think we have found your new home; let’s put it on paper.

Another approach to the assumptive close would be to talk about the next steps as if the offer were signed.

When we receive confirmation of your offer, we will immediately begin finalizing the loan as well as arrange for a property inspection.

A positive choice is a choice of two factors, either of which indicate a purchase.

Positive choice. Give the buyer a **positive choice**—that is, a choice between two things rather than between something and nothing. The skillful salesperson never asks the buyer a question that can be answered with a flat “no.” Here are two examples of positive-choice questions:

Would you prefer government-backed financing with a lower down payment and higher monthly payments or conventional financing with a higher down payment and lower monthly payments?

If the seller will retile the kitchen floor, what size tile do you prefer, 18- or 20-inch?

You have seen [three] houses you really like. Which one do you feel you would be happiest in? Why? Let’s see if we can make this your home.

Inducement. If used properly, an **inducement** can be a powerful stimulant to a close. For example, consider these:

If you buy now, I believe we can lock in the current (3.6%) interest rate. You would like a 3.6% rate, wouldn't you?

I'm sure we could arrange the closing of escrow so you will not make double payments. You would like to save that money, wouldn't you?

Be careful when you use this technique. If the outcome of the sale hinges on a lower interest rate, a change of tile, or an added refrigerator and you cannot deliver, you may lose the sale. Try to hedge on your commitment by saying that you will do your best to obtain the inducement.

Fear of loss. The *fear-of-loss method*, often called the *standing-room-only technique*, is effective only if it is based on fact. Buyers have built up an immunity to such statements as this: "This is the last house in this plot, and the builder doesn't plan any further development." This technique works only if it is based on facts concerning a personal, immediate, and real situation.

Here is an example of a believable fear-of-loss close that is true and is based on researched facts:

This is the last home by this builder available in this tract. All the others are sold. When the new tract is open, the price will be \$20,000 higher for the same home. Wouldn't you rather buy now and save that amount?

When a prospective buyer has made an offer or offers on other properties but lost out to other bidders, fear of loss is a strong motivation to act now. Again, it must be based on fact. "Another agent will be showing this property to an interested couple at 3:30 pm today. If you are interested in this property, I suggest an offer right now that can be accepted before the couple sees this home."

Narrative. A *narrative close*, or *storybook close*, involves the use of a third party as an ally. If you are able to produce third-party verification of the fact you are trying to establish, the buyer is likely to accept what you say. For example, you could show a newspaper article stating that interest rates are expected to rise. In this situation, someone else is conveying the information. For example, the buyer may express a concern about some aspect of the property. Use the time-tested "feel, felt, found" technique. The agent might say, "I can appreciate how you FEEL; many of our clients have FELT the same way, but after examining it further, they have FOUND that . . ." Or you could say, "Mr. Jones just down the street had a question similar to yours. We were able to find a solution for him. If you wish, we can call him to verify my story."

If you live in the area, let the buyers know and explain the reasons you chose the location. This will add positive reinforcement for a choice.

Always use real experiences. From interfacing with other agents, you will find out about their experiences and how issues were resolved to the satisfaction of clients.

If you want a positive response, you have to ask first.

Ask for the deposit. Many salespeople do an excellent job of making a presentation and even covering all objections, but they are hesitant to ask for the sale. The reason is fear; they get a battlefield fear sensation. They fear a rejection, a “no” answer. Consequently, they overlook asking or are reluctant to ask for the deposit.

Buyers may buy if they are asked to buy, but some salespeople rarely ask. Practice and experiment with asking for the deposit. For example, say, “These units do offer an excellent appreciation potential if you’re willing to do some fixing up. Why don’t you get started on your investment program now? Will you give me your deposit check and let me get your purchase under way?” It’s all right to ask again. A coffee salesman we know once asked a close friend, the owner of a large restaurant, why he had never purchased coffee from him. The reply was, “You never asked!”

If one closing doesn’t work, continue to emphasize benefits. Suggest another look at the property and try another closing. If the property fits the buyers’ needs, they like the property, and they can afford it, then treat a failure as a “maybe.” A little more time might be all it takes.

“Let’s jot down the issues you want to address in your offer.”

Killing a Sale

A positive sales approach is to ask leading questions, gain agreement throughout the sale, then ask for the offer. A salesperson who does not use a positive approach may be the loser. The sale also can be killed by the following:

- Not listening
- Talking too much and too fast
- Being overeager to sell
- Having incomplete knowledge
- Using high-pressure tactics
- Exhibiting fear
- Criticizing competitors
- Straying from the subject
- Displaying a negative selling attitude
- Being argumentative

A Clean Offer

When a buyer is interested but “wants to sleep on it,” you should set up a definite appointment, hopefully the next day, for the buyer to make an offer, or continue the home search.

Whenever possible, contingencies should be removed, as should nickel-and-dime items such as “seller to leave the workbench in the garage.” Don’t deviate from what the seller wants unless absolutely essential. Asking for quicker occupancy could ruin the buyer’s chances. To make the offer more desirable, loan qualification

information can be attached to the offer. While price is important, a clean sale is also important and a seller is likely to accept a lower offer if the sale appears more certain. Requests for changes can be made after an offer is accepted. While not required to agree to any changes after acceptance, the seller oftentimes will go along with reasonable buyer requests. If the seller counteroffers rather than accepts the offer, then other desired items can be negotiated.

When There Are Other Offers

In the event you have a prospective buyer for a property where another offer has already been made, you could suggest the following tactic to your prospective buyer: An offer for a sum over highest bona fide offer received, such as \$5,000, but in no event more than a stated price, which would be the highest price your buyer is willing to pay. If your prospect's offer is accepted, your buyer's offer should allow for verification of the competing offer. This approach assures purchase unless the buyer's maximum has been exceeded.

THE CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

"An oral contract is not worth the paper it is written on," said Samuel Goldwyn. The California Statute of Frauds stipulates that all real estate sales contracts must be in writing to be enforceable.


When a sale has been consummated and the offer obtained, put everything in writing to avoid costly misunderstanding, bad will, and even litigation in the future. It is essential that the purchase contract include the entire agreement of the parties. There should be no "understood" provisions that are not reduced to writing. Poor draftsmanship of the purchase contract is a significant factor in lawsuits between buyer, seller, and broker, or any combination of the three. Not only must the agreement be complete, but also the parties should fully understand the agreement before signing. Many deposit receipt forms were used in California, and the buyer's offer could be submitted on any of these. However, the number of forms caused a great deal of concern in legal circles and with the California Association of REALTORS® because brokers are seldom attorneys and may be confused by the language employed. As a result, in 1985, the California Association of REALTORS®, in cooperation with the state bar and with the approval of the Department of Real Estate, developed a model form, the Residential Purchase Agreement [and Receipt for Deposit], which is now the **California Residential Purchase Agreement and Joint Escrow Instructions**. This form is now widely used in California. (See Figure 10.6.) It is possible to complete your purchase contract online and then print out the contract for signatures. (Other form providers also offer excellent purchasing agreements.)

Content of the Form

Essentially, the form acts as a checklist to ensure that a contract is complete in all respects. The responsible parties must comply with the requirements stipulated to help both parties avoid entangling legal complications. Any changes should be dated and initialed by the principals to the transaction.

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions

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**CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**
(C.A.R. FORM RPA, 12/21)

Date Prepared: _____

1. OFFER:

A. THIS IS AN OFFER FROM _____ ("Buyer").

B. THE PROPERTY to be acquired is _____, situated
in _____ (City), _____ (County), California, _____ (Zip Code),
Assessor's Parcel No(s) _____ ("Property").
(Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)

C. THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.

D. Buyer and Seller are referred to herein as the "Parties." Brokers and Agents are **not** Parties to this Agreement.

2. AGENCY:

A. DISCLOSURE: The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.

B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction.

Seller's Brokerage Firm _____ License Number _____
Is the broker of (check one): ☐ the Seller; or ☐ both the Buyer and Seller (Dual Agent).
Seller's Agent _____ License Number _____
Is (check one): ☐ the Seller's Agent (Salesperson or broker associate); or ☐ both the Buyer's and Seller's Agent (Dual Agent).

Buyer's Brokerage Firm _____ License Number _____
Is the broker of (check one): ☐ the Buyer; or ☐ both the Buyer and Seller (Dual Agent).
Buyer's Agent _____ License Number _____
Is (check one): ☐ the Buyer's Agent (Salesperson or broker associate); or ☐ both the Buyer's and Seller's Agent (Dual Agent).

C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).

D. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. TERMS OF PURCHASE AND ALLOCATION OF COSTS: The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 16 pages. The Parties are advised to read all 16 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B (cash)	Purchase Price	\$ _____	<input type="checkbox"/> All Cash
B		Close Of Escrow (COE)	_____ Days after Acceptance OR on _____ (date)	
C	32A	Expiration of Offer	3 calendar days after all Buyer Signature(s) or _____ (date), at 5PM or <input type="checkbox"/> AM <input type="checkbox"/> PM	
D(1)	5A(1)	Initial Deposit Amount	\$ _____ (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	within 3 (or _____) business days after Acceptance by wire transfer OR <input type="checkbox"/> _____
D(2)	5A(2)	<input type="checkbox"/> Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	\$ _____ (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR <input type="checkbox"/> _____ (date) OR <input type="checkbox"/> _____
E(1)	5C(1)	Loan Amount(s): First Interest Rate _____ Points _____ If FHA or VA checked, Deliver list of lender required repairs	\$ _____ (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed _____ % Buyer to pay zero points or up to _____ % of the loan amount 17 (or _____) Days after Acceptance	Conventional or, if checked, <input type="checkbox"/> FHA <input type="checkbox"/> VA (CAR Forms FVAC, HID attached) <input type="checkbox"/> Seller Financing <input type="checkbox"/> Other: _____
E(2)	5C(2)	Additional Financed Amount Interest Rate _____ Points _____	\$ _____ (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate, not to exceed _____ % Buyer to pay zero points or up to _____ % of the loan amount	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Other: _____
E(3)	7A	Occupancy Type	Primary, or if checked, <input type="checkbox"/> Secondary <input type="checkbox"/> Investment	
F	5D	Balance of Down Payment	\$ _____	
		PURCHASE PRICE TOTAL	\$ _____	

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 1 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (_____ % of purchase price) (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____			
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
I	Intentionally Left Blank			
J	16	Final Verification of Condition	5 (or _____) Days prior to COE	
K	23	Assignment Request	17 (or _____) Days after Acceptance	
L	8	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES	CONTINGENCY REMOVED
L(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	<input type="checkbox"/> No loan contingency
L(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or <input type="checkbox"/> \$ _____	17 (or _____) Days after Acceptance	<input type="checkbox"/> No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.
L(3)	8C, 12	Investigation of Property Informational Access to Property Buyer's right to access the Property for informational purposes is NOT a contingency, does NOT create cancellation rights, and applies even if contingencies are removed.	17 (or _____) Days after Acceptance 17 (or _____) Days after Acceptance	REMOVAL OR WAIVER OF CONTINGENCY: Any contingency in L(1)-L(7) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8H . <input type="checkbox"/> CR attached
L(4)	8D, 14A	Review of Seller Documents	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(5)	8E, 13A	Preliminary ("Title") Report	17 (or _____) Days after Acceptance or 5 Days after receipt, whichever is later	
L(6)	8F, 11K	Common Interest Disclosures required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(7)	8G, 9B(6)	Review of leased or lien items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(8)	8J	Sale of Buyer's Property Sale of Buyer's property is not a contingency, UNLESS checked here: <input type="checkbox"/> C.A.R. Form COP attached		
M	Possession		Time for Performance	Additional Terms
M(1)		Time of Possession	Upon notice of recordation, OR <input type="checkbox"/> 6 PM or <input type="checkbox"/> AM <input type="checkbox"/> PM on date specified, as applicable, in 3M(2) or attached TOPA.	
M(2)	7C	Seller Occupied or Vacant units	COE date or, if checked below, <input type="checkbox"/> _____ days after COE (29 or fewer days) <input type="checkbox"/> _____ days after COE (30 or more days)	
M(3)		Tenant Occupied units	See Tenant Occupied Property Addendum (C.A.R. form TOPA)	If tenant occupied <input type="checkbox"/> TOPA or <input type="checkbox"/> Other, attached
N	Documents/Fees/Compliance		Time for Performance	
N(1)	14A	Seller Delivery of Documents	7 (or _____) Days after Acceptance	
N(2)	19B	Sign and return Escrow Holder Provisions and Instructions	5 (or _____) Days after receipt	
N(3)	11K(2)	Time to pay fees for ordering HOA Documents	3 (or _____) Days after Acceptance	
N(4)	10B(1)	Install smoke alarm(s), CO detector(s), water heater bracing	7 (or _____) Days after Acceptance	
N(5)	28	Evidence of representative authority	3 Days after Acceptance	
O	Intentionally Left Blank			

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 2 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

P	Items Included and Excluded			
P(1)	9	Items Included - All items specified in Paragraph 9B are included and the following, if checked: <input type="checkbox"/> Stove(s), oven(s), stove/oven combo(s); <input type="checkbox"/> Refrigerator(s); <input type="checkbox"/> Wine Refrigerator(s); <input type="checkbox"/> Washer(s); <input type="checkbox"/> Dryer(s); <input type="checkbox"/> Dishwasher(s); <input type="checkbox"/> Microwave(s); Additional Items Included: <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____		
		<input type="checkbox"/> Video doorbell(s); <input type="checkbox"/> Security camera equipment; <input type="checkbox"/> Security system(s)/alarm(s), other than separate video doorbell and camera equipment; <input type="checkbox"/> Smart home control devices; <input type="checkbox"/> Wall mounted brackets for video or audio equipment; <input type="checkbox"/> Above-ground pool(s) / <input type="checkbox"/> spa(s); <input checked="" type="checkbox"/> Bathroom mirrors, unless excluded below; <input type="checkbox"/> Electric car charging systems and stations; <input type="checkbox"/> Potted trees/shrubs;		
P(2)		Excluded Items: <input type="checkbox"/> _____; <input type="checkbox"/> _____; <input type="checkbox"/> _____;		
Q	Allocation of Costs			
	Paragraph #	Item Description	Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)	Additional Terms
Q(1)	10A, 11A	Natural Hazard Zone Disclosure Report, including tax information	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	<input type="checkbox"/> Environmental <input type="checkbox"/> Other _____ <input type="checkbox"/> Provided by: _____
Q(2)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(3)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(4)	10B(1)	Smoke alarms, CO detectors, water heater bracing	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(5)	10A 10B(2)	Government Required Point of Sale inspections, reports	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(6)	10B(2)(A)	Government Required Point of Sale corrective/remedial actions	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(7)	19B	Escrow Fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Each to pay their own fees	Escrow Holder: _____
Q(8)	13	Owner's title insurance policy	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Title Company (If different from Escrow Holder): _____
Q(9)		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
Q(10)		County transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(11)		City transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(12)	11K(2)	HOA fee for preparing disclosures	Seller	
Q(13)		HOA certification fee	Buyer	
Q(14)		HOA transfer fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Unless Otherwise Agreed, Seller shall pay for separate HOA move-out fee and Buyer shall pay for separate move-in fee. Applies if separately billed or itemized with cost in transfer fee.
Q(15)		Private transfer fees	Seller, or if checked, <input type="checkbox"/> Buyer <input type="checkbox"/> Both _____	
Q(16)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(17)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(18)	10C	Home warranty plan: _____	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Buyer waives home warranty plan	
R	OTHER TERMS: _____			

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 3 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

4. PROPERTY ADDENDA AND ADVISORIES: (check all that apply)

A. PROPERTY TYPE ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

☐ Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)
☐ Manufactured Home Purchase Addendum (C.A.R. Form MH-PA)
☐ Tenant Occupied Property Addendum (C.A.R. Form TOPA) (Should be checked whether current tenants will remain or not.)
☐ Tenancy in Common Purchase Addendum (C.A.R. Form TIC-PA)
☐ Stock Cooperative Purchase Addendum (C.A.R. Form COOP-PA)
☐ Other _____

B. OTHER ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

☐ Addendum # _____ (C.A.R. Form ADM) ☐ Short Sale Addendum (C.A.R. Form SSA)
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
☐ Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI)
☐ Buyer Intent to Exchange Addendum (C.A.R. Form BXA) ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
☐ Other _____

C. BUYER AND SELLER ADVISORIES: (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)

☒ Buyer's Inspection Advisory (C.A.R. Form BIA) ☒ Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)
☒ Wire Fraud Advisory (C.A.R. Form WFA) ☒ Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)
 (Parties may also receive a privacy disclosure from their own Agent.)
☐ Wildfire Disaster Advisory (C.A.R. Form WFDA) ☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
☐ Trust Advisory (C.A.R. Form TA) ☐ Short Sale Information and Advisory (C.A.R. Form SSIa)
☐ REO Advisory (C.A.R. Form REO) ☐ Probate Advisory (C.A.R. Form PA)
☐ Other _____ ☐ Other _____

5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE: Buyer represents that funds will be good when deposited with Escrow Holder.

A. DEPOSIT:

(1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in paragraph 3D(1) and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.

(2) **INCREASED DEPOSIT:** Increased deposit specified in paragraph 3D(2) is to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.

(3) **RETENTION OF DEPOSIT:** Paragraph 29, if initialed by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. ALL CASH OFFER: If an all cash offer is specified in paragraph 3A, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in paragraph 3H(1), Deliver written verification of funds sufficient for the purchase price and closing costs.

C. LOAN(S):

(1) **FIRST LOAN:** This loan will provide for conventional financing UNLESS FHA, VA, Seller Financing (C.A.R. Form SFA), or Other is checked in paragraph 3E(1).

(2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in paragraph 3E(2), that amount will provide for conventional financing UNLESS Seller Financing (C.A.R. Form SFA), or Other is checked in paragraph 3E(2).

(3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in paragraph 3E, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of paragraph 6B, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.

(4) **FHA/VA:** If FHA or VA is checked in paragraph 3E(1), a FHA/VA amendatory clause (C.A.R. Form FVAC) shall be incorporated and Signed by all Parties. Buyer shall, within the time specified in paragraph 3E(1), Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements. Notwithstanding Seller's agreement that Buyer may obtain FHA or VA financing, Seller has no obligation to pay or satisfy any or all lender requirements unless agreed in writing.

D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT, paragraph 3F) (including all-cash funds) to be deposited with Escrow Holder pursuant to Escrow Holder instructions.

E. LIMITS ON CREDITS TO BUYER: Any credit to Buyer as specified in paragraph 3G(1) or Otherwise Agreed, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

6. ADDITIONAL FINANCING TERMS:

A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Written verification of Buyer's down payment and closing costs, within the time specified in paragraph 3H(2) may be made by Buyer or Buyer's lender or loan broker pursuant to paragraph 6B.

B. VERIFICATION OF LOAN APPLICATIONS: Buyer shall Deliver to Seller, within the time specified in paragraph 3H(3) a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3E. If any loan specified in paragraph 3E is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 4 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

C. BUYER STATED FINANCING: Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (**paragraph 3B**) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

7. CLOSING AND POSSESSION:

A. OCCUPANCY: Buyer intends to occupy the Property as indicated in **paragraph 3E(3)**. Occupancy may impact available financing.

B. CONDITION OF PROPERTY ON CLOSING:

(1) Unless Otherwise Agreed: (i) the Property shall be delivered "**As-Is**" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within **3 Days**, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.

(2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**

C. SELLER REMAINING IN POSSESSION AFTER CLOSE OF ESCROW: If Seller has the right to remain in possession after Close Of Escrow pursuant to **paragraph 3M(2)** or as Otherwise Agreed, (i) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; (ii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan; and (iii) consult with a qualified California real estate attorney where the Property is located to determine the ongoing rights and responsibilities of both Buyer and Seller with regard to each other, including possible tenant rights, and what type of written agreement to use to document the relationship between the Parties.

D. At Close Of Escrow: (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.

E. Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either **paragraph 3P or **paragraph 9**. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.**

8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:

A. LOAN(S):

(1) This Agreement is, **unless otherwise specified in paragraph 3L(1) or an attached CR form**, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). **If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**

(2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.

(3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.

(4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

(5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3L(1)**, obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

B. APPRAISAL:

(1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.

(2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.

C. INVESTIGATION OF PROPERTY: This Agreement is, as specified in **paragraph 3L(3)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property. See **paragraph 12**.

D. REVIEW OF SELLER DOCUMENTS: This Agreement is, as specified in **paragraph 3L(4)**, contingent upon Buyer's review of Seller's documents required in **paragraph 14A**.

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 5 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

E. TITLE:

(1) This Agreement is, as specified in **paragraph 3L(5)**, contingent upon Buyer's ability to obtain the title policy provided for in **paragraph 13G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.

(2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE): This Agreement is, as specified in **paragraph 3L(6)**, contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 11K** ("CI Disclosures").

G. BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY: Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(6)**, is, as specified in **paragraph 3L(7)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3L(7)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller-disclosed leased or lienied items.

H. REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER: Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.

I. REMOVAL OF CONTINGENCY OR CANCELLATION:

(1) For any contingency specified in **paragraph 3L** or **8**, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.

(2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in **paragraph 3L** or **5 Days** after receipt of Seller Documents or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.

(3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.

J. SALE OF BUYER'S PROPERTY: This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in **paragraph 3L(8)**.

9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or **paragraph 3P** or as Otherwise Agreed. Any items included herein are components of the home and are not intended to affect the price. All items are transferred without Seller warranty.

B. ITEMS INCLUDED IN SALE:

(1) All EXISTING fixtures and fittings that are attached to the Property;

(2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not checked in **paragraph 3P**), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in **paragraph 3P**, if currently existing at the time of Acceptance.

Note: If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager or other third party, the item should be listed as being excluded in **paragraph 3P** or excluded by Seller in a counter offer.

(3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in **paragraph 3P**, all such items are included in the sale, whether hard wired or not.

(4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.

(5) Non-Dedicated Devices: If checked in **paragraph 3P**, all smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.

(6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in **paragraph 3N(1)**, shall (i) disclose to Buyer if any item or system specified in **paragraph 3P** or **9B** or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.

(7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to **paragraph 9B(6)**, and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 6 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

C. ITEMS EXCLUDED FROM SALE: Unless Otherwise Agreed, the following items are excluded from sale: (i) All items specified in **paragraph 3P(2)**; (ii) audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; (iii) furniture and other items secured to the Property for earthquake or safety purposes. **Unless otherwise specified in paragraph 3P(1), brackets attached to walls, floors or ceilings for any such component, furniture or item will be removed and holes or other damage shall be repaired, but not painted.**

10. ALLOCATION OF COSTS:

A. INSPECTIONS, REPORTS AND CERTIFICATES: Paragraphs 3Q(1), (2), (3), and (5) only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; **it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3R, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).**

B. GOVERNMENT REQUIREMENTS AND CORRECTIVE OR REMEDIAL ACTIONS:

(1) **LEGALLY REQUIRED INSTALLATIONS AND PROPERTY IMPROVEMENTS:** Any required installation of smoke alarm or carbon monoxide device(s) or securing of water heater shall be completed within the time specified in **paragraph 3N(4)** and paid by the Party specified in **paragraph 3Q(4)**. If Buyer is to pay for these items, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation. Prior to Close Of Escrow, Seller shall Deliver to Buyer written statement(s) of compliance in accordance with any Law, unless Seller is exempt. If Seller is to pay for these items and does not fulfill Seller's obligation in the time specified, and Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for Buyer's costs.

(2) **POINT OF SALE REQUIREMENTS:**

(A) Point of sale inspections, reports and repairs refer to any such actions required to be completed before or after Close Of Escrow that are required in order to close under any Law and paid by Party specified in **paragraphs 3Q(5) and 3Q(6)**. Unless Parties Otherwise Agree to another time period, any such repair, shall be completed prior to final verification of Property. If Buyer agrees to pay for any portion of such repair, Buyer, shall (i) directly pay to the vendor completing the repair or (ii) provide an invoice to Escrow Holder, deposit funds into escrow sufficient to pay for Buyer's portion of such repair and request Escrow Holder pay the vendor completing the repair.

(B) Buyer shall be provided, within the time specified in **paragraph 3N(1)**, unless Parties Otherwise Agree to another time period, a Copy of any required government-conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

(3) **REINSPECTION FEES:** If any repair in **paragraph 10B(1)** is not completed within the time specified and the lender requires an additional inspection to be made, Seller shall be responsible for any corresponding reinspection fee. If Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for those costs.

(4) **INFORMATION AND ADVICE ON REQUIREMENTS:** Buyer and Seller are advised to seek information from a knowledgeable source regarding local and State mandates and whether they are point of sale requirements or requirements of ownership. Agents do not have expertise in this area and cannot ascertain all of the requirements or costs of compliance.

C. HOME WARRANTY:

(1) Buyer shall choose the coverages, regardless of any optional coverages indicated, of the home warranty plan and Buyer shall pay any cost of that plan, chosen by Buyer, that exceeds the amount allocated to Seller in **paragraph 3Q(18)**. Buyer is informed that home warranty plans have many optional coverages, including but not limited to, coverages for Air Conditioner and Pool/Spa. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

(2) **If Buyer waives the purchase of a home warranty plan in paragraph 3Q(18), Buyer may still purchase a home warranty plan, at Buyer's expense, prior to Close Of Escrow.**

11. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:

A. TDS, NHD, AND OTHER STATUTORY AND SUPPLEMENTAL DISCLOSURES:

(1) Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer, unless exempt, fully completed disclosures or notices required by §§ 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement (C.A.R. Form TDS), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or ESD), and, if the Property is in a high or very high fire hazard severity area, the information, notices, documentation, and agreements required by §§ 1102.6(f) and 1102.19 of the Civil Code (C.A.R. Form FHDS).

(2) The Real Estate Transfer Disclosure Statement required by this paragraph is considered fully completed if Seller has completed the section titled Coordination with Other Disclosure Forms by checking a box (Section I), and Seller has completed and answered all questions and Signed the Seller's Information section (Section II) and the Seller's Agent, if any, has completed and Signed the Seller's Agent's section (Section III), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Section V acknowledgment of receipt of a Copy of the TDS shall be Signed after all previous sections, if applicable, have been completed. Nothing stated herein relieves a Buyer's Agent, if any, from the obligation to (i) conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or (ii) complete any sections on all disclosures required to be completed by Buyer's Agent.

(3) Seller shall, within the time specified in **paragraph 3N(1)**, provide "Supplemental Disclosures" as follows: (i) unless exempt from the obligation to provide a TDS, complete a Seller Property Questionnaire (C.A.R. Form SPQ) by answering all questions and Signing and Delivering a Copy to Buyer; (ii) if exempt from the obligation to provide a TDS, complete an Exempt Seller Disclosure (C.A.R. Form ESD) by answering all questions and Signing and Delivering a Copy to Buyer.

(4) In the event Seller or Seller's Agent, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer under this paragraph, Seller shall, in writing, promptly provide a subsequent or amended TDS, Seller Property Questionnaire or other document, in writing, covering those items. Any such document shall be deemed an amendment to the TDS or SPQ. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are discovered by Buyer or disclosed in reports or documents provided to or ordered and paid for by Buyer.**

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 7 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

B. LEAD DISCLOSURES:

(1) Seller shall, within the time specified in **paragraph 3N(1)**, for any residential property built before January 1, 1978, unless exempted by Law, Deliver to Buyer a fully completed Federal Lead-Based Paint Disclosures (C.A.R. Form LPD) and pamphlet ("Lead Disclosures").

(2) Buyer shall, within the time specified in **paragraph 3L(3)**, have the opportunity to conduct a risk assessment or to inspect for the presence of lead-based paint hazards.

C. HOME FIRE HARDENING DISCLOSURE AND ADVISORY: For any transaction where a TDS is required, the property is located in a high or very high fire hazard severity zone, and the home was constructed before January 1, 2010, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer: (i) a home hardening disclosure required by law; and (ii) a statement of features of which the Seller is aware that may make the home vulnerable to wildfire and flying embers; and (iii) a final inspection report regarding compliance with defensible space requirements if one was prepared pursuant to Government Code § 51182 (C.A.R. Form FHDS).

D. DEFENSIBLE SPACE DISCLOSURE AND ADDENDUM: For any transaction in which a TDS is required and the property is located in a high or very high fire hazard severity zone, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer (i) a disclosure of whether the Property is in compliance with any applicable defensible space laws designed to protect a structure on the Property from fire; and (ii) an addendum allocating responsibility for compliance with any such defensible space law (C.A.R. Form FHDS).

E. WAIVER PROHIBITED: Waiver of Statutory, Lead, and other Disclosures in **paragraphs 11A(1), 11B, 11C, and 11D** are prohibited by Law.

F. RETURN OF SIGNED COPIES: Buyer shall, within the time specified in **paragraph 3L(3) OR 5 Days** after Delivery of any disclosures specified in **paragraphs 11 A, B, C or D**, and defensible space addendum in **paragraph 11D**, whichever is later, return Signed Copies of the disclosures, and if applicable, addendum, to Seller.

G. TERMINATION RIGHTS:

(1) **Statutory and Other Disclosures:** If any disclosure specified in **paragraphs 11A, B, C, or D**, or subsequent or amended disclosure to those just specified, is Delivered to Buyer after the offer is Signed, Buyer shall have the right to terminate this Agreement within **3 Days** after Delivery in person, or **5 Days** after Delivery by deposit in the mail, or by an electronic record or email satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of rescission to Seller or Seller's Authorized Agent. If Buyer does not rescind within this time period, Buyer has been deemed to have approved the disclosure and shall not have the right to cancel.

(2) **Defensible Space Compliance:** If, by the time specified in **paragraph 11F**, Buyer does not agree to the terms regarding defensible space compliance Delivered by Seller, as indicated by mutual signatures on the FHDS, then Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement.

H. WITHHOLDING TAXES: Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); **OR (ii)** to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; **OR (iii)** to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.

I. MEGAN'S LAW DATABASE DISCLOSURE: Notice: Pursuant to § 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

J. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES: This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

K. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

(1) Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).

(2) If the Property is a condominium or is located in a planned development or other common interest development with a HOA, Seller shall, within the time specified in **paragraph 3N(3)**, order from, and pay any required fee as specified in **paragraph 3Q(12)** for the following items to the HOA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; (v) the names and contact information of all HOAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to HOA or management company to pay for any of the above.

L. NATURAL AND ENVIRONMENTAL HAZARDS: Seller shall, within the time specified in **paragraph 3N(1)**, if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 8 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

- Property Address: _____ Date: _____
- M. KNOWN MATERIAL FACTS:** Seller shall, within the time specified in **paragraph 3N(1)**, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.
- 12. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A.** Buyer shall, within the time specified in **paragraph 3L(3)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B.** Buyer Investigations include, but are not limited to:
- (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
 - (A) A general home inspection.
 - (B) An inspection for lead-based paint and other lead-based paint hazards.
 - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
 - (D) Any other specific inspections of the physical condition of the land and improvements.
 - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Inspection Advisory (C.A.R. Form BIA) for more.
 - (3) A review of reports, disclosures or information prepared by or for Seller and Delivered to Buyer pursuant to **paragraphs 3, 10, 11, and 14A**.
- C.** Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D.** Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, (i) by the time specified in **paragraph 3L(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and (ii) by the time specified in **paragraph 3L(3)** or **3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. Buyer indemnity and Seller protection for entry upon the Property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.
- 13. TITLE AND VESTING:**
- A.** Buyer shall, within the time specified in **paragraph 3N(1)**, be provided a current Preliminary Report by the person responsible for paying for the title report in **paragraph 3Q(8)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B.** Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C.** Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D.** Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E.** If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F.** Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 9 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

G. Buyer shall receive a "ALTA/CLTA Homeowner's Policy of Title Insurance" or equivalent policy of title insurance, if applicable to the type of property and buyer. Escrow Holder shall request this policy. If a ALTA/CLTA Homeowner's Policy of Title Insurance is not offered, Buyer shall receive a CLTA Standard Coverage policy unless Buyer has chosen another policy and instructed Escrow Holder in writing of the policy chosen and agreed to pay any increase in cost. Buyer should consult with the Title Company about the availability, and difference in coverage, and cost, if any, between a ALTA/CLTA Homeowner's Policy and a CLTA Standard Coverage policy and other title policies and endorsements. Buyer should receive notice from the Title Company on its Preliminary (Title) Report of the type of coverage offered. If Buyer is not notified on the Preliminary (Title) Report or is not satisfied with the policy offered, and Buyer nonetheless removes the contingency for Review of the Preliminary Report, Buyer will receive the policy as specified in this paragraph.

14. **TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. **SELLER DELIVERY OF DOCUMENTS:** Seller shall, within the time specified in paragraph 3N(1), Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in paragraphs 9B(6), 10, 11A, 11B, 11C, 11D, 11H, 11K, 11L, 11M, 13A, and 13D.

B. **BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION**

- (1) Buyer has the time specified in paragraph 3 to: (i) perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 9B(6), and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Other Disclosures Delivered by Seller in accordance with paragraph 11.
- (2) Buyer may, within the time specified in paragraph 3L(3), request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.
- (3) Buyer shall, by the end of the times specified in paragraph 3L (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, other than those in paragraph 11A or 11B, is not Delivered within the time specified in paragraph 3N(1), then Buyer has 5 Days after Delivery of any such items, or the times specified in paragraph 3L, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency but there may be a right to terminate for a subsequent or amended disclosure under paragraph 11G.
- (4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 3L and before Seller cancels, if at all, pursuant to paragraph 14C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 14C(1).

C. **SELLER RIGHT TO CANCEL:**

- (1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3D(1) or 3D(2) or if the funds deposited pursuant to paragraph 3D(1) or 3D(2) are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by paragraph 5C(3); (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by paragraph 5C(4) (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by paragraph 5B or 6A; (v) Deliver a letter as required by paragraph 6B; (vi) In writing assume or accept leases or liens specified in paragraph 8G; (vii) Return Statutory and Other Disclosures as required by paragraph 11F; (viii) Cooperate with the title company's effort to comply with the GTO as required by paragraph 13E; (ix) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 5A(2) and 29; (x) Provide evidence of authority to Sign in a representative capacity as specified in paragraph 28; or (xi) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer and other expenses already paid by Escrow Holder pursuant to this Agreement prior to Seller's cancellation.
- (3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.

D. **BUYER RIGHT TO CANCEL:**

- (1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer and other expenses already paid by Escrow Holder pursuant to this Agreement prior to Buyer's cancellation.
- (2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in paragraph 3N(1) or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.
- (3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in paragraph 8, or Otherwise Agreed, so long as that contingency has not already been removed in writing.

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 10 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

E. NOTICE TO BUYER OR SELLER TO PERFORM: The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 Days** after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than **2 Days** prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in **paragraph 14**, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void, and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.

F. EFFECT OF REMOVAL OF CONTINGENCIES:

(1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

(2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.

G. DEMAND TO CLOSE ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the above timeframe, the DCE shall be deemed invalid and void, and Seller or Buyer shall be required to Deliver a new DCE.

H. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. **A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**

15. REPAIRS: Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.

16. FINAL VERIFICATION OF CONDITION: Buyer shall have the right to make a final verification of the Property condition within the time specified in **paragraph 3J**, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to **paragraph 7B**; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

17. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS: Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, HOA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any HOA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

18. BROKERS AND AGENTS:

A. COMPENSATION: Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.

B. SCOPE OF DUTY: Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 11 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

19. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: **paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3R, 4A, 4B, 5A(1-2) 5D, 5E, 10B(2)(A), 10B(3), 10C, 11H, 11K(2), 13 (except 13D), 14H, 17, 18A, 19, 23, 25, 27, 28, 32, 33, and paragraph 3 of the Real Estate Brokers Section.** If a Copy of the separate compensation agreement(s) provided for in **paragraph 18A** or **paragraph 3 of the Real Estate Brokers Section** is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.

B. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in **paragraph 3N(2)**. Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 Days**, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by **paragraphs 3, 8, 10, 11, or elsewhere** in this Agreement.

C. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** after Acceptance. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under **paragraph 11H**, Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal Law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under **paragraph 11H**.

D. Agents are not a party to the escrow, except for Brokers for the sole purpose of compensation pursuant to **paragraph 18A** and **paragraph 3 of the Real Estate Brokers Section**. If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in **paragraph 18A**, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.

E. Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within **3 Days** or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.

F. Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to **paragraphs 5A(1) and 5A(2)**. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: (i) if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.

G. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.

20. SELECTION OF SERVICE PROVIDERS: Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

21. MULTIPLE LISTING SERVICE ("MLS"): Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: (i) any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; (ii) California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and (iii) Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.

22. ATTORNEY FEES AND COSTS: In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in **paragraph 30A**.

23. ASSIGNMENT: Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in **paragraph 6B**. Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in **paragraph 3K**, Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOAA).

24. EQUAL HOUSING OPPORTUNITY: The Property is sold in compliance with federal, state and local anti-discrimination Laws.

25. DEFINITIONS and INSTRUCTIONS: The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:

A. "Acceptance" means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 12 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

B. **"Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in **paragraph 2B**.

C. **"Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.

D. **"As-Is"** condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.

E. **"Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.

F. **"C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.

G. **"Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.

H. **"Copy"** means copy by any means including photocopy, facsimile and electronic.

I. **Counting Days** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday ("Allowable Performance Day"), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder's office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.

J. **"Day"** or **"Days"** means calendar day or days. However, delivery of deposit to escrow is based on business days.

K. **"Deliver", "Delivered" or "Delivery"** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an Electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.

L. **"Electronic Copy" or "Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.

M. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.

N. **"Legally Authorized Signer"** means an individual who has authority to Sign for the principal as specified in **paragraph 32** or **paragraph 33**.

O. **"Otherwise Agreed"** means an agreement in writing, signed by both Parties and Delivered to each.

P. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.

Q. **"Sign" or "Signed"** means either a handwritten or Electronic Signature on an original document, Copy or any counterpart.

26. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initiated by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.

27. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

28. **LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in **paragraph 32** or **33** appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer (i) represents that the entity for which that person is acting already exists and is in good standing to do business in California and (ii) shall Deliver to the other Party and Escrow Holder, within the time specified in **paragraph 3N(5)**, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

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Buyer's Initials _____ / _____ Seller's Initials _____ / _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 13 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

29. LIQUIDATED DAMAGES (By initialing in the space below, you are agreeing to Liquidated Damages):
 If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

30. MEDIATION:

A. The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

B. ADDITIONAL MEDIATION TERMS: (i) Exclusions from this mediation agreement are specified in paragraph 31B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 31C; and (iii) Agent's rights and obligations are further specified in paragraph 31D. These terms apply even if the Arbitration of Disputes paragraph is not initialed.

31. ARBITRATION OF DISPUTES:

A. The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR ☐ _____ . The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.

B. EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985.

C. PRESERVATION OF ACTIONS: The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.

D. AGENTS: Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.

E. "NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ / _____ Seller's Initials _____ / _____



FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

32. BUYER'S OFFER

A. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**

B. ☐ ENTITY BUYERS: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

(1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.

(2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 28** for additional terms.

(3) The name(s) of the Legally Authorized Signer(s) is/are: _____

(4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

C. The RPA has 16 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. BUYER SIGNATURE(S):

(Signature) By, _____ **Date:** _____

Printed name of BUYER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

(Signature) By, _____ **Date:** _____

Printed name of BUYER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

33. ACCEPTANCE

A. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.

Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.

Seller shall return and include the entire agreement with any response.

☐ **Seller Counter Offer** (C.A.R. Form SCO or SMC0)

☐ **Back-Up Offer Addendum** (C.A.R. Form BUO)

B. ☐ Entity Sellers: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

(1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.

(2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 28** for additional terms.

(3) The name(s) of the Legally Authorized Signer(s) is/are: _____

(4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

C. The RPA has 16 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. SELLER SIGNATURE(S):

(Signature) By, _____ **Date:** _____

Printed name of SELLER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

(Signature) By, _____ **Date:** _____

Printed name of SELLER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

OFFER NOT ACCEPTED: _____/_____/_____
Seller's Initials No Counter Offer is being made. This offer was not accepted by Seller _____ (date)

RPA 12/21 (PAGE 15 OF 16)

Buyer's Initials _____/_____/_____ Seller's Initials _____/_____/_____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 15 OF 16)

FIGURE 10.5: California Residential Purchase Agreement and Joint Escrow Instructions (continued)

Property Address: _____ Date: _____

REAL ESTATE BROKERS SECTION:

1. Real Estate Agents are not parties to the Agreement between Buyer and Seller.
2. Agency relationships are confirmed as stated in paragraph 2.
3. **Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
4. **Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
5. **Agents' Signatures and designated electronic delivery address:**
 - A. Buyer's Brokerage Firm** _____ Lic. # _____
By _____ Lic. # _____ Date _____
By _____ Lic. # _____ Date _____
☐ More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.
☐ More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.
Designated Electronic Delivery Address(es):
Email _____ Text # _____
Alternate: _____
☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.
Address _____ City _____ State _____ Zip _____
 - B. Seller's Brokerage Firm** _____ Lic. # _____
By _____ Lic. # _____ Date _____
By _____ Lic. # _____ Date _____
☐ More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.
☐ More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.
Designated Electronic Delivery Address(es) (To be filled out by Seller's Agent):
Email _____ Text # _____
Alternate: _____
☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.
Address _____ City _____ State _____ Zip _____

ESCROW HOLDER ACKNOWLEDGMENT:
Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), Counter Offer numbers _____ and _____, and agrees to act as Escrow Holder subject to paragraph 19 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.
Escrow Holder is advised by _____ that the date of Acceptance of the Agreement is _____
Escrow Holder _____ Escrow # _____
By _____ Date _____
Address _____
Phone/Fax/E-mail _____
Escrow Holder has the following license number # _____
☐ Department of Financial Protection and Innovation, ☐ Department of Insurance, ☐ Department of Real Estate.

PRESENTATION OF OFFER: _____/_____/_____ Seller's Brokerage Firm presented this offer to Seller on _____ (date).
Agent or Seller Initials _____

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RPA 12/21 (PAGE 16 OF 16) Buyer's Initials _____/_____/_____ Seller's Initials _____/_____/_____

EQUAL HOUSING OPPORTUNITY

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 16 OF 16)

Understanding the California Residential Purchase Agreement and Joint Escrow Instructions

Paragraph 1: Offer. 1A shows the buyer or buyers; 1B describes the property by address, legal description, and/or assessor's parcel number and further indicates the city or county where the property is located; 1C indicates terms of purchase are specified later; and 1D points out that the agents are not party to the agreement.

Paragraph 2: Agency.

Subparagraph A. This is acknowledgment by buyer and seller as to receipt of agency disclosure.

Subparagraph B. The agency relations selected are confirmed.

Subparagraph C. This indicates if more than one agent represents a party to the escrow.

Subparagraph D. The possibility of multiple representations is explained.

Paragraph 3: Terms of purchase and allocation of costs. The contractual terms are set forth in Subparagraphs A through R.

Paragraph 4: Property addenda and advisories.

Subparagraph A. By checking the appropriate box, you can identify the type of property.

Subparagraph B. Other addendums can be incorporated by reference.

Subparagraph C. Various advisories checked are included for reference purposes but are not part of this agreement.

Paragraph 5: Additional terms affecting purchase price.

Subparagraph A. This provides for deposit delivery, increases in deposit, and forfeiture of deposit if the buyer defaults.

Subparagraph B. This provides for all cash offers.

Subparagraph C. This provides for loans needed.

Subparagraph D. This provides for the balance of the purchase price to be paid.

Subparagraph E. This covers limits on credits to the buyer.

Paragraph 6: Additional financing terms.

Subparagraph A. This covers verification of the down payment and closing costs.

Subparagraph B. This covers verification of loan applications.

Subparagraph C. The seller is relying on the buyer's representation as to financing arranged.

Paragraph 7: Closing and possession.

- Subparagraph A. This paragraph states whether the buyer intends to occupy the premises as a principal residence. If the buyer intends the property to be a principal residence, then liquidated damages resulting from buyer default cannot exceed 3% of the purchase price. (See paragraph 21B.)
- (If a buyer falsely indicates a property will be the principal residence for the purpose of obtaining a loan at a lower rate of interest, it would be fraud against the lender.)
- Subparagraph B. This covers the condition of property on closing. The property will be in the condition it was as of the date of acceptance. The buyer is advised to conduct an inspection of the property.
- Subparagraph C. This covers the seller remaining in possession after close of escrow and the need for legal advice.
- Subparagraph D. The seller agrees to assign warranty rights to the buyer.
- Subparagraph E. This paragraph provides that keys, openers, et cetera will be given to the buyer.

Paragraph 8: Contingencies and removal of contingencies.

- Subparagraph A. If the property fails to qualify for the desired loan and there is no loan contingency, the buyer is not entitled to cancellation rights.
- Failure of the buyer to obtain insurance may justify cancellation of the contract based on the investigation contingency. The buyer's obligation to deposit funds is not a contingency.
- If no loan contingency is checked on the offer, it is not a contingency.
- Subparagraph B. The appraisal contingency is related to value only. If there is no loan contingency, a low appraisal is not a basis for cancellation.
- Subparagraph C. The offer is contingent on the buyer's acceptance of the condition of the property.
- Subparagraph D. The offer is contingent upon review of the seller's documents.
- Subparagraph E. Title purchase is contingent upon the buyer's ability to get title insurance.
- Subparagraph F. The offer is contingent upon the buyer's review of the Common Interest Disclosure.
- Subparagraph G. The offer is contingent upon the buyer's acceptance of a loan, a maintenance contract, or other financial obligations.
- Subparagraph H. If the buyer removes the contingency before it is satisfied, the buyer gives up all rights.
- Subparagraph I. The buyer must remove the contingency or cancel within the prescribed time.

Subparagraph J. Unless sale of another property is checked on the offer, it is not a contingency.

Paragraph 9: Items included in and excluded from sale. This paragraph makes it clear that designated fixtures remain with the property, but it also provides for inclusion of other items in the sale, as well as exclusion of designated items from the sale. The agent should make certain that questionable items such as installed TVs, et cetera are covered.

Also covered are leased and liened items. The buyer's ability to assume any lease or accept subject to a lien is a contingency.

Paragraph 10: Allocation of costs.

Subparagraph A. Who is to pay for any corrective work required by inspections should be specified.

Subparagraph B. This sets forth who is responsible. Compliance with government inclusion requirements and retrofit are accounted for.

Subparagraph C. This determines responsibility for a home warranty plan.

Paragraph 11: Statutory and other disclosures (including lead-based paint hazard disclosures) and cancellation rights. This paragraph requires the seller to provide all required statutory and other disclosures, including but not limited to lead paint, a transfer disclosure statement, natural and environmental hazard disclosures and booklets, withholding as to FIRPTA, Megan's Law database, notice regarding gas and hazardous liquids, transmission lines, and condominium and planned development disclosures.

Paragraph 12: Buyer's investigation of property and matters affecting property. This paragraph provides for the buyer's rights to inspection and provides for either the removal of the inspection contingency or cancellation of the agreement. Utilities must be on for the buyer's inspection. The buyer agrees to keep the property free from liens (pay for investigative work), repair any damage and costs associated with inspection, and protect the owner from any liability because of such investigations and inspections.

Unless otherwise indicated, property is sold in present condition, subject to the buyer's inspection rights, and will be maintained in substantially the same condition.

Subparagraph A. The seller will disclose known material facts and defects.

Subparagraph B. The buyer has the right of inspection and may cancel the agreement or request corrective action based on defects discovered.

Subparagraph C. The buyer is strongly advised to conduct an investigation of the property.

Paragraph 13: Title and vesting.

- Subparagraph A. This paragraph provides that the buyer will receive a preliminary title report.
- Subparagraph B. This paragraph indicates that title will be taken in present condition and subject to stated nonmonetary encumbrances.
- Subparagraph C. This paragraph sets forth the seller's duty to provide the escrow holder with necessary information to clear title.
- Subparagraph D. This paragraph provides that title will be transferred by a grant deed, and the buyer is notified to obtain professional advice as to the manner of taking title.
- Subparagraph E. This paragraph provides that the buyer will receive a homeowners policy of title insurance.

Paragraph 14: Time periods; removal of contingencies; cancellation rights. This paragraph sets forth all time periods for compliance and disclosures. Modification of time periods must be in writing. If the seller removes contingencies, this will be conclusive evidence of the buyer's election to proceed with the transaction. If the buyer and seller agree to cancellation of the agreement, release of the funds will require mutual signed agreement (with a civil penalty of up to \$1,000 for refusal to sign the agreement if no good faith dispute exists).

In November 2014, the California Association of REALTORS® made a pretty significant change to the purchase contract. Previously in the event of a failed escrow, the release of the buyer's deposit could only be released after receiving mutually signed cancellation instructions. However, the current iteration of the purchase contract allows the escrow company to make a demand on a party for cancellation of the escrow. If the party fails to respond within 10 days, the escrow company is permitted to release the buyer's deposit. This is a massive shift from all previous versions of the purchase contract because it allows either the buyers or the sellers to tell escrow that they want to cancel a given transaction, and theoretically if the other party didn't respond for whatever reason for 10 days, the escrow company can unilaterally release funds without a subsequent signature.

Paragraph 15: Repairs. Seller repairs will be completed prior to final inspection and will be performed in accordance with governmental requirements in a skillful manner.

Paragraph 16: Final verification of condition. This paragraph provides the buyer the right to conduct a final inspection before close of escrow to confirm that the property has been properly maintained and repairs have been made, and that the seller has complied with other contractual obligations.

Paragraph 17: Prorations of property taxes and other items. This paragraph provides for proration of taxes and other items based on a 30-day month. Bonds will be assumed without buyer credit if not yet due.

Paragraph 18: Brokers and agents. Parties agree to pay brokers as determined in a separate written agreement. Subparagraph B points out what the broker doesn't do and is not responsible for.

Paragraph 19: Joint escrow instructions to escrow holder. This paragraph provides that designated paragraphs of the agreement are joint escrow instructions and that the agreement will be delivered to the escrow within a designated period. It makes clear that the broker is a party to the escrow only so far as those commission rights are concerned that have been irrevocably assigned to the broker.

Paragraph 20: Selection of service providers. The broker does not guarantee performance of any service provider she may have referred to the buyer and/or seller.

Paragraph 21: Multiple listing service. This paragraph gives the broker the right to report the sale terms to an MLS to be published. Without this authorization, release of information by an agent could breach the duty of confidentiality.

Paragraph 22: Attorney fees and costs. In the event of a legal proceeding or arbitration, the prevailing party will be entitled to reasonable attorney's fees.

Paragraph 23: Assignment. The buyer agrees not to assign any portion of this agreement to a named party without the written permission of seller. Permission will not be unreasonably withheld toward the buyer's obligation unless otherwise agreed.

Paragraph 24: Equal housing opportunity. This paragraph states that the sale is being made in compliance with antidiscrimination laws.

Paragraph 25: Definitions and instructions. This paragraph provides definitions of terms used.

Paragraph 26: Terms and conditions of offer. This paragraph makes it clear it is an offer that includes initialed paragraphs and provides that, should the buyer default after acceptance, the buyer may be responsible for the broker's commission.

Paragraph 27: Time of essence; entire contract; changes. This is the complete agreement and may not be contradicted by prior agreements or contemporaneous oral agreements. It cannot be extended, modified, or changed except in writing signed by both buyer and seller.

Paragraph 28: Legally authorized signer. If a party is acting as a representative, the party will so indicate and deliver supporting documentation to escrow.

Paragraph 29: Liquidated damages. Any added remedy for the buyer's breach will be invalid unless the clause added satisfies the statutory liquidated damages requirement. For one to four residential units that buyer intends to occupy, the liquidated damages cannot exceed 3% of the sales price.

As an example, if a sale is for \$500,000 and the buyer who has indicated the intention to reside in that property defaults, the maximum liquidated damages would be \$15,000. Any deposit in excess of \$15,000 would be returned to the buyer.

Unreasonably high liquidated damages could be determined by a court to be a penalty. A court will not enforce such a penalty.

Paragraph 30: Mediation. The parties agree to try to settle any dispute by mediation. By initialing, the parties agree to binding arbitration of any dispute not settled by mediation. (If it is not initialed, the parties could settle disputes through the courts.)

Disputes with brokers are subject to mediation and arbitration only if the brokers agree to such resolution.

Paragraph 31: Arbitration of disputes. If a dispute is not settled by mediation, the parties may agree to arbitration before a neutral arbitrator. Decisions of the arbitrator will be binding.

Paragraph 32: Buyer's offer. This paragraph provides a definite termination time and date if the offer is not accepted by that time and date. The buyer need not respond to the offer. The buyer's signature as to the offer is included in this paragraph.

Paragraph 33: Acceptance. The seller warrants ownership and accepts the offer on terms indicated, or by checking the appropriate block indicates acceptance subject to attached counteroffer.

The buyer initials confirmation of receipt of acceptance.

There is a block for the broker to sign in which the broker agrees to cooperating broker compensation.

Another block is signed by the escrow holder acknowledging receipt of copy of the agreement.


Buyer Agent Closing

When you are representing the buyer under a buyer-agency agreement, you have a duty to best serve the interests of your principal. Those interests would include finding a house that best meets the needs of your principal at the best price and to protect the buyer against any foreseeable problems. As a buyer's agent, you should have built a trust relationship so you can ask a simple question, "Do you like this house?" and/or "Does this house meet your needs better than anything I have found for you?" Don't ask these questions unless you know the reply will be positive. You could then continue with, "I think we should offer [\$] because . . . , and any offer should be contingent upon a professional inspection. Does that make sense to you?" If the response is positive, and it should be, you can begin writing up the offer. Of course, you should justify the offering price based on comparables, changes in market conditions, as well as known facts about the property, and the seller.

ESTIMATED BUYER'S COSTS

When formulating the purchase offer, provide the buyer with the good faith estimate of buyer's acquisition costs—an estimate of the total cash requirements, as well as estimated monthly payments based on the offer. Although costs will vary between lenders and escrow companies, you must nevertheless strive to be realistic. Be honest and full in your disclosures. It is best for any error to be on the high side. (Keep in mind that because the dollar amount of real estate transactions is so high, surprises can make people very unhappy.)

FIGURE 10.6: Good Faith Estimate of Buyer's Acquisition Costs

	GOOD FAITH ESTIMATE OF BUYER'S ACQUISITION COSTS On Acquisition of Property
Prepared by: Agent _____ Broker _____	
Phone _____ Email _____	

NOTE: This form is used by a buyer's agent when preparing a purchase agreement offer or receiving a counteroffer and disclosing the financial requirements the buyer can anticipate, to prepare a worksheet for review with the buyer estimating the total costs of acquisition and amount and source of funds needed to close the transaction.

The figures estimated in this cost sheet may vary the time of closing due to periodic changes in lender demands, escrow fees, other charges and prorates, and thus constitute an opinion, not a guarantee of the preparer.

If acquiring IRC §1031 replacement property, also use a §1031 Profit and Basis Recap Sheet to compute the income tax consequences of the transaction. [See RPI Form 354]

DATE: _____, 20_____, at _____, California.

1. This is an estimate of acquisition costs and the funds required to close the following transaction:
☐ Purchase Agreement ☐ Exchange Agreement ☐ Counteroffer ☐ Escrow Instructions ☐ Option

1.1 entered into by _____,

1.2 dated _____, 20_____, at _____, California,

1.3 regarding real estate referred to as _____.

2. EXISTING FINANCING ASSUMED:

2.1 First Trust Deed of Record.....\$ _____

2.2 Second Trust Deed of Record.....\$ _____

2.3 Other Encumbrances/Liens/Bonds.....\$ _____

2.4 **TOTAL** Encumbrances Assumed [lines 2.1 to 2.4].....(+) \$ _____

a. If loan balance adjustments are to be made in cash, the total funds required to close escrow at §10 and §12 will vary.

3. INSTALLMENT SALE FINANCING:

3.1 Seller Carryback Financing.....(+) \$ _____

4. NEW FINANCING ORIGINATED:

4.1 New Loan Amount(+) \$ _____

4.2 Points/Discount.....\$ _____

4.3 Appraisal Fee.....\$ _____

4.4 Credit Report Fee.....\$ _____

4.5 Miscellaneous Origination Fees.....\$ _____

4.6 Prepaid Interest.....\$ _____

4.7 Mortgage Insurance Premium (MIP).....\$ _____

4.8 Lender's Title Policy Premium.....\$ _____

4.9 Tax Service Fee.....\$ _____

4.10 Loan Brokerage Fee.....\$ _____

4.11 Other\$ _____

4.12 **TOTAL** New Financing Costs [lines 4.2 to 4.11].....(+) \$ _____

5. PURCHASE COSTS AND CHARGES:

5.1 Assumption Fees (First).....\$ _____

5.2 Assumption Fees (Second).....\$ _____

5.3 Escrow Fee.....\$ _____

5.4 Notary Fee.....\$ _____

5.5 Document Preparation Fee.....\$ _____

5.6 Recording Fee/Transfer Taxes.....\$ _____

5.7 Title Insurance Premium.....\$ _____

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FIGURE 10.6: Good Faith Estimate of Buyer's Acquisition Costs (continued)

----- PAGE 2 OF 2 — FORM 311 -----

5.8 Property Condition Reports.....\$ _____

5.9 Cost of Compliance Repairs\$ _____

5.10 Other\$ _____

5.11 Other\$ _____

5.12 **TOTAL** Closing Costs [lines 5.1 to 5.11].....(+) \$ _____

5.13 Down Payment on Price.....(+) \$ _____

6. TOTAL ESTIMATED ACQUISITION COST [lines 2.4, 3.1, 4.1, 4.12, 5.12 and 5.13].....(=) \$ _____

6.1 No post-closing repairs or renovation cost are included here.

7. FUNDS REQUIRED TO CLOSE ESCROW:

7.1 Down Payment On Price (From line 5.13).....(+) \$ _____

7.2 Closing Costs (From line 5.12).....(+) \$ _____

7.3 New Loan Proceeds (From line 4.1).....(+) \$ _____

7.4 New Financing Costs (From line 4.12).....(+) \$ _____

7.5 Impounds for New Financing.....(+) \$ _____

7.6 Hazard Insurance Premium.....(+) \$ _____

8. PRORATES DUE BUYER AT CLOSING:

8.1 Unpaid Taxes/Assessments.....\$ _____

8.2 Interest Accrued and Unpaid.....\$ _____

8.3 Unearned Rental Income.....\$ _____

8.4 Tenant Security Deposits.....\$ _____

8.5 **TOTAL** Prorates Due Buyer [lines 8.1 to 8.4].....(-) \$ _____

9. PRORATES DUE SELLER AT CLOSING:

9.1 Prepaid Taxes/Assessments.....\$ _____

9.2 Impound Account Balance.....\$ _____

9.3 Prepaid Homeowners' Assessment.....\$ _____

9.4 Prepaid Ground Lease Rent.....\$ _____

9.5 Unpaid Rent Assigned to Buyer.....\$ _____

9.6 Other\$ _____

9.7 **TOTAL** Prorates Due Seller [lines 9.1 to 9.6].....(+) \$ _____

10. TOTAL FUNDS REQUIRED TO CLOSE ESCROW: [lines 6, 7.1 to 7.6, less 8.5 plus 9.7].....(=) \$ _____

10.1 See §2.4.a. adjustments.

11. SOURCE OF FUNDS REQUIRED TO CLOSE ESCROW:

11.1 New First Loan Amount (From line 4.1).....\$ _____

11.2 New Second Loan Amount (Net Loan Proceeds).....\$ _____

11.3 Third-Party Deposits.....\$ _____

11.4 Buyer's Cash.....\$ _____

12. TOTAL FUNDS REQUIRED TO CLOSE ESCROW: (Same as line 10).....(=) \$ _____

I have prepared this estimate based on my knowledge and readily available data.

Date: _____, 20____

Broker: _____

Agent: _____

CalBRE#: _____

Signature: _____

I have read and received a copy of this estimate.

Date: _____, 20____

Buyer's Name: _____

Signature: _____

Signature: _____

Fine-Tuning the Offer

If buyers suggest an offer at an unrealistic price or terms, or both, consider writing up the offer. Before you give it to your prospective buyers to sign, ask the following:

Do you like this house?

You say you like the house, but you want to give an offer that doesn't indicate this. If you were the sellers, what would you think about this offer?

In this market, if you really want this property, I would advise giving your best offer. Raise this offer by just []% and you'll have a chance to be an owner. Let's write it up at [\$]. At that price, it is still an exceptional opportunity, and your offer at least will have a fighting chance of being accepted.

Complete this offer and hand it to the prospective buyers, along with a pen.

SUMMARY

Selling is helping others meet their needs. Selling can give buyers the security of home ownership.

Selling involves elements such as persuasion, communication, discovery, and knowledge of the customer and knowledge of the product. Your strategy should be based on the type of prospect and the prospect's attitude toward purchasing in general and purchasing a special property in particular.

To close a sale, you must appeal to buying motives, watch for buying signals, overcome any resistance that is raised, and attempt a trial close. Buying motives include survival, security, pride of ownership, love of family, health, desire for profit or gain, and desire for comfort and convenience.

If you understand buying signals, you know when to close. Timing can be essential. Treat objections as a natural part of a sale. Welcome the objection, concede before answering, rephrase the objection as a question, and meet the objection. You can forestall an obvious objection by bringing it up yourself and covering it.

You have a choice of six basic techniques with untold variations for closing:

1. An assumptive close asks a question that assumes the prospect will buy.
2. The positive choice gives the prospect a choice between positive actions.
3. The inducement technique contains a benefit for buying now.
4. The fear of loss or approval is based on a "last chance."
5. The narrative close uses third-party verification.
6. The ask-for-a-deposit close gets right to the heart of the matter.

Sales can be lost for many reasons. Generally, salespeople lose sales by talking when they should be listening and not knowing when they should be silent. Overeagerness, incomplete knowledge, too much pressure, appearing frightened,

criticizing competitors, wandering from your purpose, displaying a negative attitude, and being argumentative or negative are all reasons why salespeople fail.

The estimated buyer's closing cost should be given to the buyer before the offer is complete. Buyers don't like to be surprised. Be realistic in estimating buyer costs.

The 10-page California Residential Purchase Agreement and Joint Escrow Instructions form is a complete agreement that you must fully understand before attempting to sell a property. The form is designed to aid you in explaining the agreement and in meeting your obligations.

CLASS DISCUSSION TOPICS

1. How would you overcome the following buyer objections?
 - a. I wanted a house with a [pool] and this house doesn't have a [pool].
 - b. I didn't want an older house.
 - c. I don't like the location.
 - d. The price is too high.
 - e. The monthly assessments are way too high.
 - f. The interest rate is too high; I better wait.
 - g. The mortgage payments are more than my rent.
 - h. The financing is too complicated.
 - i. I'm worried about [my job/the economy].
 - j. I want to sell my present home first.
 - k. We want to think it over.
 - l. I'd like to discuss it with [my accountant/lawyer/son-in-law].
2. Using another student to represent a buyer, demonstrate a closing (no more than three minutes).

3. Complete a Residential Purchase Agreement for the residential property in Unit 6, Class Discussion Topic 5, according to the following:

<i>Buyers:</i>	Orem and Melody Rosatta
<i>Deposit:</i>	Personal check for \$15,000
<i>Purchase price:</i>	\$500,000
<i>Financing contingency:</i>	Contingent on obtaining a new 80% fixed-rate loan at no more than 5¼% interest and no more than \$8,000 in loan fees and discount points. Buyers will provide evidence that they are prequalified for a loan, meeting above terms within five days of acceptance.
<i>Appraisal contingency:</i>	Offer contingent on property appraisal for no less than purchase price (there are no other contingencies).
<i>Closing:</i>	Within 60 days of acceptance. Possession at closing.
<i>Occupancy:</i>	Buyers intend property as their permanent residence.
<i>Fees and costs:</i>	Seller will pay transfer fees and title insurance. Escrow fees shall be split equally. Apex Escrow shall be the escrow for the transaction. Sewer and well costs are not applicable. Seller will pay for smoke detector and water heater bracing as required. All other costs are to be borne by seller. Seller will pay for a one-year home warranty, as well as a pest control inspection, and seller will pay for any corrective work indicated.
<i>Condition:</i>	Seller will pay for inspections and reports set forth in paragraph 7 of the purchase contract.
<i>Personal property included:</i>	Refrigerator, pool equipment, fireplace accessories, window coverings, portable steel garden building, and riding lawn mower.

4. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. A good salesperson
 - a. uses technical terms whenever possible to impress buyers.
 - b. speaks fast so she can reach the closing.
 - c. approaches every customer in the same way.
 - d. does none of these.
2. A salesperson appeals to buying motives. Which of the following is a buying motive?
 - a. Love of family
 - b. Comfort and convenience
 - c. Security
 - d. All of these
3. Disadvantages of home ownership include
 - a. increase in expenses.
 - b. risk.
 - c. lack of liquidity.
 - d. all of these.
4. Buying signals might include a buyer's
 - a. whispering with a spouse.
 - b. pacing off a room.
 - c. seeming reluctant to leave a property.
 - d. doing all of these.
5. A prospective buyer says, "The price is too high." The *BEST* response is
 - a. "I think the price is fair."
 - b. "Why don't you offer less?"
 - c. "The comparable sales don't bear that out."
 - d. "Why do you feel that the price is too high?"
6. A professional salesperson knows that
 - a. telling is more effective than asking.
 - b. appealing to emotions should be avoided.
 - c. in dealing with a cautious buyer, you should be assertive and push for a decision.
 - d. none of these apply.
7. When you ask prospective buyers if they prefer June 1, July 1, or August 1 for possession, what type of closing technique are you using?
 - a. Inducement
 - b. Positive choice
 - c. Fear of loss
 - d. Narrative close

8. The paragraph in the purchase contract in which the buyer indicates an intention to occupy the property (applies to 1–4-unit residential properties) is important because it relates to
 - a. liquidated damages.
 - b. vesting of title.
 - c. smoke detectors.
 - d. home protection plans.
9. Who can modify an accepted offer to purchase?
 - a. The selling broker
 - b. The listing broker
 - c. The listing broker and the seller
 - d. The buyer and the seller by mutual agreement
10. In making a property inspection, the inspector hired by the buyer negligently damaged the air-conditioning unit. Who is responsible for the damage based on the California Residential Purchase Agreement and Joint Escrow Instructions?
 - a. The seller
 - b. The buyer
 - c. The buyer's agent
 - d. The seller's agent

11

UNIT ELEVEN



FROM OFFER TO CLOSING

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- describe the preparation required before presentation of the offer;
- explain how to deal with multiple offers and how to present offers to owners;
- understand your agency duties to your principal as to recommendations;
- demonstrate how to deal with objections;
- explain when and how to prepare a counteroffer and what to do when an offer is accepted; and
- explain the importance of checklists for closing.

KEY TERMS

acceptance
bitcoin
bump clause
buyer's remorse
cash-out scheme

closing
counteroffer
history of the sale
multiple offers
rejection

release of contract
rent skimming
subordination clause
terms

THE OFFER TO PURCHASE

The offer to purchase is really the California Residential Purchase Agreement and Joint Escrow Instructions that was covered in Unit 10. When it is signed by the buyers, we customarily call it an *offer to purchase*. Keep in mind that selling real estate really involves the following three separate sales:

1. Selling the owner on a listing or the buyer on agency representation
2. Selling the buyer on an offer
3. Selling the seller on an acceptance

While two out of three might be a tremendous average in baseball, you have totally failed if the third sale is not completed.

A seller's agent must continue sales efforts until an offer has been accepted. To cease working to sell a property merely because an offer was received is not in the owners' best interest. It could be regarded as unethical conduct.

Preparing to Submit the Offer

The third sale—acceptance of the offer—is the one that means success.

After you receive an offer to purchase, preparation is normally necessary for your presentation of the offer to the owners.

The appointment. When you have a signed offer to purchase on the property listed by another office, notify the listing office immediately and deliver the offer to the listing office as soon as possible. Provide information you have about the buyers and whether they have qualified or been approved for a loan. If the offer is for less than the list price, you might want to include any data you have that justifies the price. The listing agent has a fiduciary relationship with the owner. The listing agent should present the offer to the owner. There might be circumstances where the listing agent would want the selling agent present when making the offer. Keep in mind that a listing agent, who has sole agency duties to the seller, has different objectives than an agent whose sole agency is to the buyer. It is the listing agent's responsibility to make an appointment with the owners to present the offer to them.

Avoid giving any details about an offer to an owner until you can present the offer in its entirety.

If the property is an office listing and the offer is for less than the list price, it is a good idea to set up an appointment with the owner as soon as possible so as not to be questioned by the owner. You don't want to discuss details of the offer on the phone. You need to present the entire offer, not just the price. Revealing only one aspect of an offer, when not presented as part of the total package, could result in antagonistic owners rejecting an offer, an action that could be to their detriment.

When viewed as a whole, the offer at what an owner regards as too low a price might appear much more acceptable, or it could be the starting point for an acceptable counteroffer.

You want to be able to present the offer to all the owners at once. Whenever possible, schedule the presentation after small children have gone to bed, because any interruptions can make your job extremely difficult.

Should the owners contact you before you present the offer and ask you what the offer is, we suggest this answer:

It wouldn't be fair to you or the buyers to condense the offer into a minute or two. This offer deserves careful consideration as well as explanation. You will want to see this offer.

If the owner persists, ask "Can you and [spouse or co-owner, if applicable] meet with me right now?"

Owners can't accept offers over the phone, so try to avoid presenting them over the phone.

Generally, you should not present an offer over the telephone. The sellers can't accept over the phone, but they can say no. A phone presentation should only be made when the owners are unable to use Skype or Zoom for a visual presentation. While not as effective as a face-to-face encounter, it is far superior to that of a phone. Because of the pandemic, many owners and agents wished to avoid face-to-face meetings and chose to use a visual computer application. Unfortunately, friends tend to give uninformed advice they think the owners want to hear, such as "Oh! Your home is worth more than that!"

If you must present the offer by phone, you should also email the offer. The offer cannot be accepted until a signed copy is transmitted electronically or placed in the mail.

Make certain the sellers know what they will receive.

If the listing agent does not have much experience, the agent's broker may want to be present.

Estimated seller's proceeds. For an offer less than list price, prepare an Estimated Seller Proceeds form, based on the offer received. Show the owners what they will net from the offer. Use of this form shows the owners that you are being straightforward in your dealings with them. Your recommendations will bear more weight when it is clear to the owners that you are being totally aboveboard in your dealings.

Comparative market analysis. If market values have changed and the property has been on the market for several months, update the comparative market analysis (CMA) that you prepared when you took the listing. If a comparable used for the CMA has been sold, you want to be able to present the sale information.

Anticipate problems. Role-playing exercises such as those discussed in Unit 1 can be an important part of your preparation. From analysis of the offer, you can anticipate the objections you will receive. Decide how you are going to help the owners overcome problem areas (if you believe it is in their best interests to accept the offer).

Present multiple offers in an impartial manner.

Multiple offers. When more than one offer has been received on a property, you must present the **multiple offers** together. If you know of another offer that has not yet been received, you have a duty to inform the owners of it. You even have a duty to inform owners of verbal offers, although they're not binding, nor can they be accepted.

Keep in mind that as a seller's agent your first duty is to your seller, not to your firm or for your personal gain. Offers should be presented in a nonprejudicial manner so that owners can compare the offers and make their decision. With multiple offers, you might want to suggest obtaining loan preapproval on all the prospective purchasers. The owners might otherwise accept an offer from a buyer who is unable to obtain financing and reject the offer from a prospective buyer who would have no difficulty obtaining the necessary loan.

A listing agent might want to encourage multiple offers so that the seller is able to take advantage of competition. The listing agent may want to obtain the seller's permission to inform all offerors of the fact that there are multiple offers. The agent could suggest to the owner that a deadline be set for improved offers. In a seller's market, this could be beneficial to the seller.

A selling agent wants the buyer to be successful in a competitive situation, as long as the successful purchase is in the best interests of the buyer. Price is important to the seller, as is the cleanest deal, which is the sale that will most likely avoid problems. Besides increasing price, even if above list price, sellers are likely to react favorably to an offer where the buyer pays all escrow fees and other closing costs and is without contingencies.

Setting the mood. You should present the offer to the owners at your office or the owners' home. If at the home, a good place to present the offer is at the kitchen table (likely in the same location where you took the listing). This is a nonthreatening environment, and the listing and selling agent can physically be quite close to the owners. If presented in any other room, use a table such as a cocktail table and sit close together with direct eye contact with the owners.

To set a positive mood, mention some feature that played a part in the sale and that the owners can be proud of. For example:

Frankly, I think the reason I have an offer on the house is because of your delightful garden. The buyers fell in love with your rose bushes.

While [Mrs. Wilson] loves your light and bright decorating, [Mr. Wilson] was sold on your house because of the workroom in the garage. It's something he has always wanted.

This is also the time to confirm agency election and obtain the seller's signature on the confirmation, unless it is part of the purchase contract.

Stages of the presentation. Professional presentations are well organized. One organization plan is a two-stage presentation, as follows:

1. A history of the property sales effort and any problems with the property
2. The offer itself

As in a sale, agents should use a closing if they feel acceptance of the offer is in the best interest of the sellers.

History of the sale. If the property has been on the market for several months or longer, go over the **history of the sale**.

Cover the following:

- The length of time on the market (in days)
- Previous listings or sale efforts (for sale by owner)
- Advertising (all types)
- The role of the multiple listing service
- Internet postings
- Agent caravans
- Open houses
- Showings
- Your weekly activity reports
- Responses to showings—reasons why other buyers rejected the home (negative features or lack of features)
- Any other offers received

If the property was recently listed and you already have received an offer, it is possible the owners may feel that they must have set their sale price too low. These owners can become adamant about not giving one inch.

Consider the following approach:

[Mr. and Mrs. Finch], when you listed the property with me, I explained that offers are very often received within a few days of the property being placed on the market. When this happens, you are fortunate, and you're fortunate today. Real estate agents, as well as buyers, get excited over new listings, because they feel they're getting first chance at a home rather than it being shopworn merchandise that hundreds of buyers have rejected. In fact, the most active sale period for a listing is the first 30 days it is on the market. When it's on the market longer than that, it can become much harder work to locate a buyer. For this reason, it is important to avoid listing a property at a price that is too high because you will lose much of the momentum resulting from taking a new listing. Steer clear of the trap to "list high and then come down later."

Often, owners reject offers that they receive within days of the listing and then go for a long time without another offer. Do you know what happens then? In most cases, when they do get an offer, it is for less than they received earlier. I'm telling you this so you don't respond emotionally to this offer but rather receive it with reason.

The Offer

We recommend that you gain agreement on the little things before you hand the offer to the sellers. As an example, get agreement about the following:

- The occupancy date
- What stays with the house or goes
- Seller preparing a transfer disclosure statement
- Name of escrow and if costs are to be split
- Prorating of taxes
- Keys and openers to be turned over
- Other pertinent terms

Then hand copies of the offer to each owner. If everything else has been agreed upon, then the only obstacle to a sale is the price.

Some agents like to use a silent approach and wait for owners to react. If the offer is substantially in accordance with the listing, you could go through the offer paragraph by paragraph with the owners. Answer any questions they may have. When you are finished, ask them to initial clauses where appropriate and to approve the agreement by signing where you have indicated.

Justify the Offer

When an offer is less than the list price, you must be able to justify the offer, or you risk that the sellers will regard the buyers as arbitrary. Explain how or why the buyer decided on the offering price. When sellers and buyers have a high regard for each other, there is less likelihood of a sale's failing during escrow. An example of such an explanation is:

You don't want the buyer to appear arbitrary as to price.

While the offer I have is 3% less than the list price, I believe it is a fair offer. Even though I convinced the [Henleys] that your home met their needs better than [the house off Wedgewood Way], they didn't feel they should pay more than what they would have paid for the [Wedgewood Way] house.

Not only does this statement justify the price, it again emphasizes that the sellers are in competition with other sellers. In cases in which an offer is reasonable, acceptance rather than a counteroffer should be sought; by expressing price difference as a percentage it makes it seem like less of a difference. By accepting, your sellers will be the winners over the owners of the competing house. Always be completely honest in justifying acceptance of an offer.

Agent Recommendations—Accept, Reject, or Counteroffer

It is unethical for a seller's agent to recommend to owners that an offer be accepted if the agent does not feel that the offer is in the best interests of the owners, considering the market, the property, and their needs. If an offer is clearly not in the owners' best interests, tell them. This is part of your fiduciary duty. The less sophisticated the owners, the greater is your duty to advise them. The name of the game is not "a commission by any means."

Owners' Responses to Offers

Keep in mind that owners have three choices when an offer is received:

1. Acceptance
2. Rejection
3. Counteroffer

It would be unusual if you were to recommend outright rejection. This recommendation likely would be made only in cases of clearly frivolous offers or offers in which the buyers are attempting to take unconscionable advantage of the sellers.

If an offer is fair, work for its acceptance rather than for a counteroffer. Many agents are too quick to suggest a counteroffer when it isn't necessarily in the owners' best interests. Some agents like to push for a counteroffer because it is relatively easy and avoids further confrontation with the owners. If you truly represent the owners, you have a duty to try to make them understand that a counteroffer rejects the offer and gives the buyers an out. Once an offer is rejected, the owners have lost their right to accept and form a contract. The offer is dead.

Until accepted, an offer can be withdrawn.

Explain **buyer's remorse**. Buyer's remorse is like a virus. Most buyers get it—some worse than others. They question their wisdom in having made the offer at the price they did and wonder whether it should have been made at all. They wonder if they should have spent more time looking. To some, a counteroffer is like a heaven-sent escape.

Even buyers who intend to accept a counteroffer frequently decide to spend one more day looking before they sign. All too often, they find something they like. A great many owners have lost advantageous deals because they tried to squeeze just a little more out of buyers. A counteroffer gives up the "bird in the hand."

It is not unethical conduct to use your persuasive skills to persuade an owner to accept an offer you believe is reasonable. In fact, it is the only truly ethical way to deal with the situation.

If owners want "to sleep on it" and you feel acceptance is in their best interests, you should consider a response such as this: "Let's take a moment to go over the sale again. You placed your home on the market because . . . Are your reasons for selling still valid?" Then continue with a logical summary of the benefits of the offer and go to a closing such as this one: "Don't you agree that accepting this offer

now makes sense rather than allowing the buyers an opportunity to change their minds?” You could then hand them a pen.

Duties as a Buyer’s Agent

If an agent does not represent the seller, then the agent has a duty to try to get his client’s offer accepted. However, the agent must be absolutely honest about any facts presented to influence the seller. An agent must never aid the buyer in fraud. The buyer’s agent should fully explain the offer to the seller’s agent, especially any provision that is unusual or provides the buyer with a right to cancel the agreement. It is important that the seller understand that the agent represents the buyer as a buyer’s agent.

Protecting the Seller

As the sellers’ agent, you have a duty to protect them from fraudulent or “shady” practices. There are offers that on careful reading do not actually state what you expect them to.

If you are unsure of the meaning of an offer that has come through another agent, suggest the owners obtain legal help or reword the offer in a counteroffer. Be especially wary of any offer received on an offer form you are not familiar with. Some sharp operators use their own forms printed with a computer printer. They may even label the form with a designation number so it looks like a standard form. By submitting forms that contain what appear to be standard or “boilerplate” clauses, they could, for example, require that the sellers pay all the buyers’ loan costs, as well as all closing costs.

Be wary of offers with low earnest money deposits coupled with lengthy escrow periods. The buyer may be using the purchase offer more as an option than as a purchase with the hope of reselling it before closing. You should ask for an increased down payment and either verification of funds or the buyers’ loan preapproval.

Be particularly alert for any purchase in which it appears the buyer could be promoting a **cash-out scheme**. While there are a number of ways this can be done, the most popular is by use of a **subordination clause**. Where the property is owned free and clear or the sellers have substantial equity, the buyer offers a large cash amount and asks the sellers to carry the balance with a short-term trust deed. The catch is that the trust deed is a “subordinate” trust deed.

EXAMPLE Ina Cent owns her home free and clear. She wants to sell it for \$400,000. After the home has been on the market for several months, Cent receives an offer from Joe Sharp. Sharp offers her full price for the home, with \$100,000 down. He asks that she carry a subordinate trust deed for the \$300,000 balance at 10% interest, all due and payable in one year. This offer looks terrific to Ina Cent, so she accepts the offer. Sharp arranges for a first trust deed at \$250,000. Because the trust deed for \$300,000 is subordinate, the lender is protected by the full value of the property (a \$250,000 loan on a property having value of \$400,000).

Even though Sharp's scheme would be apparent to a lender, there are lenders who will make the new loan but would likely charge high loan origination costs, as well as a high rate of interest. As far as the lender is concerned, Sharp has a \$250,000 equity in the home. Sharp uses \$100,000 for his down payment and has \$150,000 left. He is a cash-out buyer.

The normal scenario is that Sharp would make no payments on the \$250,000 first trust deed or the \$300,000 subordinate (second) trust deed. The first trust deed would either foreclose and wipe out Ina Cent's equity or she would have to cure the first trust deed and foreclose on her second trust deed, leaving her in possession of her house but with a \$250,000 trust deed against it. Joe Sharp, in the meantime, is spending his money.

Other buyers to be on the alert for are those who enter into a purchase with no investment. While many no-down-payment sales are legitimate, there have been horror cases. No-down buyers have rented the property, collecting rent without making payments on the trust deed obligation. This is called **rent skimming**. Rent skimming is illegal in California and subject to criminal penalties, but violations still occur. The definition of rent skimming has been expanded to cover collecting rents and deposits on property not owned or controlled by the renter. The penalty for renting a unit without the owner's permission is up to one year of imprisonment plus a \$10,000 maximum fine. While this form of rent skimming usually involves a party who rents out a vacant property, usually in foreclosure, a variation occurs when a buyer with low or no earnest money is given possession prior to closing. The buyer rents out the property, delays closing, and eventually the purchase fails. Other no-down buyers have harvested trees and sold personal property that was included in the sale but was not separately secured by a lien.

At the very least, you have a duty to warn the owners of negative possibilities. You also might suggest that a check be made of court dockets to determine whether such potential buyers have been defendants in lawsuits.

Be wary of offers in which buyers want to exchange personal property or real property. Again, many exchanges are valid transactions, but there also have been many sharp deals. Make certain the value of the property being received has been properly verified. Don't accept at face value appraisals provided by the buyers. Be particularly careful if a property profile indicates that buyers have only recently acquired the property. If a trust deed is being traded for property, be on guard if it is a new trust deed. It is important to determine the creditworthiness of the trustor and if the trustor has personal liability. Also, determine the value of the property. Some buyers have created trust deeds on nearly worthless property to use as trading material for valuable property.

A few years ago, sharp buyers were using uncut diamonds and colored gemstones as trading material. They also were including appraisals. Sellers who accepted the stones often found they had sold their properties for less than 10 cents on the dollar. One scheme involved a sealed pocket of stones with a guarantee of a buyback at face amount providing the seal was not broken. Of course the seal had to be broken to evaluate the stones.

A \$3.225 million Cape Cod home in Manhattan Beach sold using bitcoin. A number of luxury properties are being offered with **bitcoin** pricing. While bitcoin and other cryptocurrencies can be converted to dollars with relatively low fees, owners should be aware of the problems dealing in bitcoins

- The value of bitcoins and similar currency are subject to rapid changes in the marketplace. Sellers should consider sale of the coins as soon as the purchase of property is completed.
- If bitcoins are used as a down payment, a legitimate mortgage may be difficult as lenders are leery about the source of the bitcoin funds. (Many users of bitcoin do so to avoid government scrutiny about their activities.)
- You do not avoid capital gains tax because you sold for bitcoins.

Because real estate involves large amounts of money, it can attract some very unscrupulous people. Many of these people are very intelligent and will devise elaborate schemes to get something for as close to nothing as possible.

A number of real estate firms as well as escrow firms have been scammed by thieves using false documents or the internet. Fake wire transfer instructions sent by email and fake cashier's checks are just two of the methods used. The Consumer Financial Protection Bureau published a fraud alert for wire transfers of earnest money, down payments, closing costs, and loan payoffs. Their advice is as follows:

- Never follow wire transfer instructions sent via email.
- Keep computer security patches and antivirus software up to date.
- Change passwords every 90 days.
- Require two-step authentication on your email accounts.
- If you suspect fraud, notify the bank or financial institution you wired the money from and request a wire recall.

Some seminars have explained unethical and often illegal schemes to attendees as a get-rich-quick answer to all their dreams. It is your duty as a real estate professional to look carefully at any deal that looks too good to be true. You have a fiduciary duty to protect your principal against the devious schemes of others. Of course, this points out why sellers should be represented by agents. (Even if you are a buyer's agent, you don't want to be an accomplice in an unethical and/or fraudulent scheme.)

Dealing With Seller Objections

Many sellers will accept your recommendations for acceptance when those recommendations are logical and you have built up a relationship of trust with the owners. However, a home sale is not all logic. Emotions play a significant role in acceptance or rejection of a purchase offer. The primary **seller objections** concern price.

Put the difference in perspective; show it as a percentage.

Price. The most common objection to an offer is about **price**. The sellers might have counted on obtaining a specified price, and they feel that accepting less is a price cut. You can answer this objection by minimizing the difference. The goal of minimizing the difference is to make the difference—the unattained portion—appear small in relation to the whole:

Buyers, not sellers, determine price. A price set by sellers is merely a wish unless they have a buyer. Right now, we have a buyer. While the offer is less than we had hoped, it is within [7%] of the comparative market analysis, which places the offer in the realm of reasonableness. You are being offered [93%] of what you hoped for. You are only a signature away from a sale.

An excellent approach when sellers are adamant on a price is:

[Mr. and Mrs. Jones], if you did not own this house and you were given the opportunity to buy it right now, would you buy the house if it could be yours for [the price of the offer]?

The answer to such a question probably will be, “No, we don’t need the house; that’s why we are selling it!” You should now continue with the very logical:

Then why are you bidding on it? When you turn down an offer for [\$489,000], you’re really saying that the house is worth more to you than has been offered. You’re an active bidder competing against this buyer. If you wouldn’t pay [\$489,000] for this house today, then you should be accepting an offer to sell it at [\$489,000].

If the owners indicate that a reasonable offer is ridiculous, point out the following:

Right now I have a check for [\$10,000]; now that’s not ridiculous. I also have an offer for [\$489,000]. It may be less than you had hoped for, but it is only [7%] less than the value established by our comparative market analysis. That to me is not ridiculous. It is a serious offer deserving serious consideration.

You will likely hear the “our friend said . . .” response. Basically, it is that someone they know who is “very knowledgeable” about real estate told them, “Don’t take a dollar less than [\$500,000] for your home.” The way to deal with this invisible friend is:

[Mr. and Mrs. Jones], let us assume that you reject this offer, and that, despite my best efforts, months pass without another offer on your house. Let us also assume we finally obtain another offer at less than the present offer. Now assume you accept this offer. Will your friend make up your loss?

This shows that the owners alone bear the results of the decision and that it should not be made by anyone else. You can point out actual case histories that sellers can relate to. Chances are your broker can tell you many stories that follow this identical scenario.

When sellers are adamant about a set price and refuse an offer that almost gives them what they want, an approach you could raise is the following:

Right now, you are willing to wait until you get what you are asking. Suppose we are able to find a buyer willing to meet your price but it takes us three months to do so, acceptance of the offer before us will likely mean more dollars in your pockets than the full price in three months. Consider the costs of taxes, insurance, (utilities), maintenance, and the lost opportunity in not having (\$____) right now. Coupled with these costs are additional risks of future offers at even lower prices.

The sellers may be thinking in terms of thousands of dollars less than they had hoped for; however, you must present the positive side of a reasonable offer. You can do this by showing the difference not in dollars but in a percentage:

Right now we have an offer giving you 93% of what you wanted to receive for your home. I think that's a pretty good offer.

The following “gambler” argument is also an excellent approach that uses percentages:

[Mr. and Mrs. Jones], you certainly are gamblers. By accepting the offer before us, you can tie the buyers to this agreement. You are proposing a counteroffer that will give you [4%] more than this offer. You are wagering [96%] against [4%]. To me those seem like pretty long odds. I know I wouldn't gamble [96 cents] to make [4 cents], and I don't think you should either.

THE COUNTEROFFER

A **counteroffer** from the seller is a modification of the buyer's offer. It is treated as a rejection of the offer received and a new offer by the seller. The buyer's acceptance of the counteroffer would result in a contract.

A little more work on the offer might eliminate the need for a counteroffer.

If agents worked harder with buyers in formulating offers, the need for **counteroffers** would be diminished. Unfortunately, some agents accept unreasonable offers from potential purchasers without expending much effort to improve the offer. This allows prospective buyers to believe that a terrific bargain is possible. What the agent is hoping for isn't acceptance but a counteroffer that might be accepted. Unfortunately, it can be difficult to get a reasonable counteroffer accepted, once prospective buyers have been given these false hopes. Nevertheless, an unreasonable offer should be countered rather than rejected, because there is still the chance of a sale. Try to structure the counteroffer in such a manner that it will be met with acceptance.

What Is a Reasonable Offer?

What is a reasonable offer will vary, depending on the market. In a seller's market with many buyers and relatively few sellers, an offer of 10% below the CMA might be viewed as unreasonable. However, in a buyer's market with many sellers, such an offer might be regarded as reasonable. As a rule of thumb, a reasonable and acceptable offer falls within 5%–10% of the value established by the CMA, again depending on the market.

If the listing agent does not feel acceptance of an offer is in the principal's best interest, the agent should advise against acceptance and make suggestions for a counteroffer that will serve the principal's interests. However, when an agent feels that the principal's best interests would be served by acceptance of an offer, the agent should strongly recommend acceptance and explain the reasons for the recommendation.

When all other efforts have failed to obtain acceptance of the offer in its present form, persuade the seller to make a counteroffer or a new offer in response to a potential buyer's offer. Any alteration to an offer, even a change in date or time of close, is considered a counteroffer. A counteroffer is a new offer where the seller becomes the offeror.

The following are the most common conditions desired by the seller when making a counteroffer:

- Increase in purchase price and/or cash deposit
- Safeguard provisions for the seller when the buyer's offer is conditional on sale of other property
- The danger of taking a property off the market for what could be a lengthy period of time, a counteroffer could then allow the seller to continue marketing the property. If another offer is received, the buyer could remove the contingency or give up the right to purchase. A bump clause gives the seller greater advantage. A **bump clause** provides that if the seller receives a higher offer, the original offerer must match the offer as well as remove the contingency or give up purchase rights. The presence of a bump clause also acts as leverage to get the buyer to remove the contingency.
- Limitations on the seller's warranties or demands that the buyer accept property as is
- Change of amount, terms, and conditions relating to loans to be carried
- Limitations on time allowed to obtain financing and the right of the seller to assist in locating a lender
- Limitation on the liability for termite work, repairs, and the like
- Change in date of possession and demand for free occupancy
- The seller's right to accept other offers until the counteroffer is accepted

The following *dos* and *don'ts* will help you prepare and present a legitimate counteroffer:

- *Do* start by amending the acceptance clause to incorporate reference to the counteroffer
- *Do* have the seller sign the printed acceptance clause as amended if a separate acceptance clause is not inserted in the provisions of the counteroffer
- *Don't* make changes in the contract simply for the sake of change
- *Don't* pressure your principal to agree when the other party wishes to have some particular right or remedy inserted

- *Do* make sure that the addendum is dated and proper reference is made to the contract of which it is a part
- *Don't* make piecemeal changes in important terms; instead, rewrite the whole paragraph in which the terms occur for better clarity
- *Do* number the items of the counteroffer and refer to the contract paragraph where possible
- *Don't* let disagreement concerning language terminate the sale
- *Do* use a simple checklist for all points to be included in the counteroffer when drafting it
- *Do* be sure that all changes are initialed or signed properly and that all parties receive copies of the final contract executed by both sides

If you recommend a counteroffer, we suggest using a separate counteroffer, such as form 101-A prepared by Professional Publishing or Form 180 prepared by Realty Publications, Inc. (Figure 11.1). Do not make changes on the purchase contract. If you change the purchase contract and the buyers counter the counteroffer and the sellers then counter the counter-counteroffer, you have a form that becomes difficult to understand. Tracing the chronological order of the sale also becomes difficult. If you use separate dated forms, what was agreed to and when will be clear. You may wish to number each counteroffer for clarity as to what the final agreement is.

Use a separate form for a counteroffer. Do not make changes on the purchase contract.

A counteroffer at full asking price isn't much of a counteroffer, even if the original price was fair or below market value. You must allow the buyers to receive some advantage from the negotiations. Many sales are lost because of stubborn buyers and sellers. Sellers refuse to give an inch, and buyers want to "save face" by gaining some concession. Many buyers will walk away from an advantageous purchase rather than pay the full price.

Unless care is exercised in negotiations, a psychological wall may be built between the buyer and the seller. Figure 11.2 shows the bricks of a psychological wall between two principals.


A good approach to use when sellers do not want to give buyers a concession on a counteroffer is the following:

Why not split the difference? The offer is for [\$430,000] and you want [\$490,000]. Why not counter at [\$460,000]?

In presenting the counteroffer to the buyers, you can make the sellers appear reasonable, because "splitting the difference" is often considered fair. Although there is no rational justification for splitting the difference, very often it is accepted.

There are often counters to counteroffers and counters to the counters to the counteroffers. You can feel like a messenger. Much of the running from seller to buyer could ordinarily have been avoided by pressing to improve the offer when originally prepared.

FIGURE 11.1: Counteroffer

	<h2 style="margin: 0;">COUNTEROFFER</h2>
<div style="display: flex; justify-content: space-between;"> <div> Prepared by: Agent _____ Broker _____ </div> <div> Phone _____ Email _____ </div> </div>	
<p>NOTE: This form is used by an agent when an offer or counteroffer for the purchase or lease of property is received and rejected by the client, to prepare a counteroffer on modified terms.</p>	
<p>DATE: _____, 20____, at _____, California. <i>Items left blank or unchecked are not applicable.</i></p>	
<p>FACTS:</p> <p>1. This is a counteroffer to an offer entitled:</p> <div style="margin-left: 20px;"> <input type="checkbox"/> Purchase agreement <input type="checkbox"/> Exchange agreement <input type="checkbox"/> Counteroffer <input type="checkbox"/> _____ </div> <p>1.1 dated _____, 20____, at _____, California, 1.2 entered into by _____, as the _____, 1.3 regarding real estate referred to as _____.</p>	
<p>AGREEMENT:</p> <p>2. The undersigned includes all the terms and conditions of the above referenced offer in this Counteroffer, subject to the following modifications:</p> <div style="margin-left: 20px;"> _____ _____ _____ _____ _____ </div> <p>2.1 <input type="checkbox"/> See attached Addendum. [RPI Form 250]</p> <p>3. This Counteroffer will be deemed revoked unless accepted in writing and delivered to the undersigned or their broker prior to the time of _____ on _____, 20____.</p>	
<p>Buyer's Broker: _____ By: _____ CalBRE#: _____</p>	<p>Seller's Broker: _____ By: _____ CalBRE#: _____</p>
<p>I agree to purchase this property as stated above. <input type="checkbox"/> See attached Signature Page Addendum. [RPI Form 251] Date: _____, 20____ Buyer's Name: _____</p> <p>Signature: _____ Buyer's Name: _____</p> <p>Signature: _____ Address: _____</p> <p>Phone: _____ Cell: _____ Email: _____</p>	<p>I agree to sell this property as stated above. <input type="checkbox"/> See attached Signature Page Addendum. [RPI Form 251] Date: _____, 20____ Seller's Name: _____</p> <p>Signature: _____ Seller's Name: _____</p> <p>Signature: _____ Address: _____</p> <p>Phone: _____ Cell: _____ Email: _____</p>
<p>FORM 180 03-11 ©2016 RPI — Realty Publications, Inc., P.O. BOX 5707, RIVERSIDE, CA 92517</p>	

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FIGURE 11.2: Building a Psychological Wall Between Principals



THE ACCEPTANCE

Acceptance of an offer must be unqualified; a *qualified acceptance* must be considered as a new offer or a counteroffer. The legal effect of any changes is to reject the original offer and bar its later acceptance.

Keep in mind that acceptance does not take place until the person making the offer is notified of the acceptance. Until that time, the offeror is free to revoke the offer. Notification of acceptance is the delivery of a signed copy of the acceptance to the offeror. The CAR Residential Purchase Agreement and Joint Escrow Instructions (see Figure 10.5) allows notification of acceptance to be to the buyer's agent (broker). Placing the acceptance in the mail constitutes notification. We recommend that you notify buyers of the acceptance immediately on receiving it.

Leave a completed offer form with the buyers, and let them know the procedure to be followed, as well as when you will contact them again. Be certain to give the buyers assurances of value and that they have purchased a fine house. People need to feel that they have done the right thing.

If buyers enjoy a home, they will not feel that they have overpaid, no matter what the price. On the other hand, if buyers are not happy in their home, even though they thought the home was a bargain—they overpaid. What really counts in the long run are the benefits, not the price tag.

Fax and Email Acceptance

There will be circumstances where you will be unable to present offers in person. In California, an electronic acceptance can be used. When you present an offer by fax, you should put your recommendations and your reasoning in a cover letter. If the offer is accepted by fax or a counteroffer is made, the seller should generate a transmission report reflecting the accurate transmission of the document.

Because email is considered an increasingly common means of modern communication, email acceptances of offers are now considered possible. The accepted offer can be an attachment to the email. Nevertheless, a signed copy of the acceptance should be placed in the mail to avoid any problems of delayed or claimed nonreceipt of electronic acceptance.

Advise the Buyer

Advise the buyer to put off any large credit purchases until after closing. Buying a new car on credit for that new garage could mean the buyer is no longer qualified for the loan and will have a new car without a garage.

CHECKLIST FOR CLOSING

Your job isn't finished with the accepted offer. Because you don't receive compensation until the escrow closes, you must make certain the **closing** actually takes place. There are many things you must do to be sure no delays occur during closing. When there are delays, the likelihood of something happening to "kill" the sale tends to increase.

Because the individuals involved in the closing of a transaction may miss certain details and errors may creep in, it is your job to check frequently to uncover small problems before they become big ones. Check frequently to see if everything is moving according to schedule. Keep all parties fully informed of all events and conclusions. Remember, referrals depend on good follow-through. Some agents and teams have personal assistants that specialize in handling the required disclosures and paperwork of closing. They keep the lines of communication open with buyers, sellers, lenders, and escrow and prevent the occurrence of many problems.

Some agents tend to lose a great many deals during escrow. They like to blame it on bad luck, but they would be surprised how much luckier they could have been if they had worked just a little harder during escrow. There are a number of low-cost computer programs available to aid you in tracking the progress of escrows.

Closing Checklist

The following checklist contains some of the things you should be doing:

- Provide information or purchase contract to escrow so the escrow holder can prepare escrow instructions.
- Make certain all applicable disclosures discussed in Unit 3 or stated in the purchase contract are made.
- If the offer calls for a structural pest control inspection, make certain that it is ordered as soon as possible.
- If the offer provides for a professional home inspection, make certain that arrangements are made and that any problems be promptly resolved.
- Make certain that parties sign the escrow instructions as soon as they are available (if they are not part of the purchase contract), as well as the necessary transfer documentation.
- Keep in touch with the lender and make certain that this entity has everything needed to complete the loan.
- Communicate with both buyer and seller at least once each week. Let both know what is happening and what you are doing for them. If there are any problems, disclose them and work with both parties toward a solution.
- If there is a walk-through final inspection, you should be there. You don't want a nervous buyer and seller getting together without you.
- Make certain the seller has labeled all keys and left behind any applicable appliance manuals, warranties, matching paint, garage-door openers, et cetera. Also, be sure the property is in clean condition. If necessary, suggest that the seller have the carpet cleaned as soon as the house is vacated.
- Communicate with the escrow on a weekly basis. You want to know if a party has not done something or if there is a problem.
- Contact the lending officer on a regular basis to make certain things are running smoothly.
- After closing, thank both buyer and seller for their faith in you.

Some buyers will use their property inspection as the basis for another “bite at the apple” or a renegotiation of the price. They may seek disproportionate adjustment in price for real or perceived problems revealed by the inspection. You can point out to such buyers that they could be giving the seller the opportunity to get out of the contract and, if they really want the property, they should not take this risk.

Should the buyer or the seller, or both, be unable or unwilling to complete the purchase, you will want the buyer and the seller to agree, as soon as possible, as to the disposition of the deposit. By immediately addressing the problem, you will reduce the likelihood of legal action. A Cancellation of Agreement form is shown in Figure 11.3. This form calls for return of funds to parties depositing the funds, as well as a waiver of all rights pertaining to the agreement and who will pay required costs and fees incurred. A lawsuit means time spent testifying as a witness or, possibly, a defendant.

FIGURE 11.3: Cancellation of Agreement

CANCELLATION OF AGREEMENT Release and Waiver of Rights with Distribution of Funds in Escrow	
NOTE: This form is used by an agent when cancelling escrow, to release the buyer, seller, and their agents from all claims and obligations arising out of the cancelled purchase or exchange agreement.	
DATE: _____, 20_____, at _____, California. <i>Items left blank or unchecked are not applicable.</i>	
FACTS:	
1. This mutual cancellation and release agreement with waiver of rights pertains to the following agreement: <input type="checkbox"/> Purchase agreement <input type="checkbox"/> Exchange agreement <input type="checkbox"/> _____	
1.1 dated _____, 20_____, at _____, California,	
1.2 entered into by _____, as the Buyer, and _____, as the Seller,	
1.3 whose real estate brokers (agents) are Buyer's Broker _____ Seller's Broker _____	
a. If an exchange is involved, the first and second parties to the exchange are here identified as Buyer and Seller, respectively.	
1.4 regarding real estate referred to as _____	
1.5 Escrow Agent _____ Escrow Number _____	
AGREEMENT:	
2. Buyer and Seller hereby cancel and release each other and their agents from all claims and obligations, known or unknown, arising out of the above referenced agreement.	
3. The real estate broker(s) and escrow agent(s) are hereby instructed to return all instruments and funds to the parties depositing them.	
4. Costs and fees to be disbursed and charged to <input type="checkbox"/> Seller, or <input type="checkbox"/> Buyer.	
4.1 \$ _____ to _____	
4.2 \$ _____ to _____	
4.3 _____ _____ _____ _____ _____	
5. The parties hereby waive any rights provided by Section 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."	
I agree to the terms stated above. <input type="checkbox"/> See attached Signature Page Addendum. [RPI Form 251] Date: _____, 20_____ Buyer's Name: _____ Signature: _____ Buyer's Name: _____ Signature: _____	I agree to the terms stated above. <input type="checkbox"/> See attached Signature Page Addendum. [RPI Form 251] Date: _____, 20_____ Seller's Name: _____ Signature: _____ Seller's Name: _____ Signature: _____
FORM 181 03-11 ©2016 RPI — Realty Publications, Inc., P.O. BOX 5707, RIVERSIDE, CA 92517	

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SUMMARY

It is important that the owners not know the details of any offer you have until you present it, so they can see the entire offer. Otherwise, they may build psychological walls that will make communication difficult. Before meeting with the owners, you should prepare a new Estimated Seller Proceeds form, and you might want to update the comparative market analysis.

Multiple offers should be presented in a fair and honest manner. A listing agent might encourage bidding by the offerees to raise the price.

Before you present the offer, set the mood by discussing what sold the buyers on the house. You also want the owners to sign the agency confirmation, if not covered in the offer form. The presentation process involves three stages:

1. The history of the sale
2. About the buyers
3. The offer itself

By covering the history of the sale, you will bring out the problems, if any, with the property that led other prospective buyers to reject the property. This helps deflate unrealistic expectations.

When you tell the owners about the buyers, make the buyers appear to be nice people that the sellers would like in their home. The buyers cannot appear to be arbitrary.

After covering the minor points, explain how the offer was arrived at. Recommend acceptance of a reasonable offer rather than advising a counteroffer. If the offer is not in the owners' best interests, however, recommend rejection or a counteroffer. If multiple offers are obtained, they should be presented in a nonprejudicial manner. Consider prequalifying buyers when multiple offers are received.

You must protect owners against fraud and sharp operators. Be on the alert for buyers who use their own forms, who want the sellers to carry a subordinate note, or who might otherwise be cash-out buyers. Also, be concerned if buyers are to obtain possession without any cash investment or if buyers want to exchange real or personal property for the owners' property. Don't place any value on appraisals provided by the buyers—verify everything. Be on the alert for buyers who recently acquired trust deeds or property and want to use them as trade property.

The most common objection raised by sellers to buyers' offers is price. It is in the owners' best interests to accept a reasonable offer rather than make a counteroffer that frees the buyers from the agreement. Counteroffers should consider benefits to both buyers and sellers and should be written on a separate form rather than added to the purchase contract. In this way, it will be easier to determine what exactly was agreed on and when.

Buyers can withdraw an offer anytime before acceptance. Acceptance does not take place until the accepted offer is mailed or delivered to the buyers.

Prepare a checklist of what must be done before closing.

Monitor the sale closely from acceptance to close of escrow while communicating with the buyers, the sellers, the escrow officer, and the loan officer on a regular basis. You must help the parties and make certain everything gets done; remember, a commission is not received until the closing.

CLASS DISCUSSION TOPICS

1. (If assigned by instructor) present a completed offer to an owner (another student). Your presentation will be either
 - the history of the sale,
 - information about the buyer, or
 - the offer itself.
2. How would you handle the following objections of the seller to an offer?
 - “That’s \$20,000 less than I paid.”
 - “Last year the house across the street from me sold for \$10,000 more than this offer, and my house is nicer than their house.”
 - “If I have to cut my price, then you have to cut your commission or I won’t accept the offer.”
 - “We would like to think it over.”
 - “The house is paid for. We can wait until we receive our price.”
3. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. For listing agents, selling real estate involves three separate sales. Which is *NOT* one of them?
 - a. Obtaining the listing
 - b. Advertising for buyers
 - c. Selling the buyer as to an offer
 - d. Selling the seller on acceptance
2. You receive two offers on a property you have listed. One is from your own firm and the other, which was received an hour earlier, is from another firm. You should
 - a. present the offers in the order received.
 - b. present the highest-price offer first and, if not accepted, present the next offer.
 - c. present the offers at the same time.
 - d. always present your firm's offer before offers from other firms.
3. It would be *MOST* difficult to persuade an owner to accept a reasonable offer received
 - a. 3 days after listing the property.
 - b. 30 days after listing the property.
 - c. 90 days after listing the property.
 - d. 180 days after listing the property.
4. When presenting an offer on your listing for less than list price, it is good policy to
 - a. immediately tell the seller what the offer is.
 - b. not recommend acceptance or rejection.
 - c. recommend that sellers counter or reject offers when acceptance is not in their best interest.
 - d. have a number of your office staff present to intimidate the sellers.
5. Many buyers have second thoughts after placing an offer. This buyer apprehension is commonly known as
 - a. feedback.
 - b. the gambler syndrome.
 - c. buyer's remorse.
 - d. negative motivation.
6. Which statement regarding counteroffers is *NOT* true?
 - a. A counteroffer serves as a rejection of an offer.
 - b. If the counteroffer is not accepted, the owner has the option of accepting the original offer.
 - c. A counteroffer turns the original offeree (the owner) into an offeror.
 - d. Both a and c.

7. You should be particularly wary if an offer is received on your listing that contains the word(s)
 - a. “subordination.”
 - b. “transfer disclosure.”
 - c. “time is of the essence.”
 - d. “liquidated damages.”
8. Rent skimming is
 - a. charging minorities an exorbitant rent.
 - b. a property manager’s failure to disclose all rents received.
 - c. a buyer’s failure to apply rents to loans that were assumed.
 - d. a tenant making monthly rent payments every 40 days.
9. After two months, you receive an offer on one of your listings. Although for less than the listing amount, the offer is certainly reasonable based on the CMA. You should recommend to the owners that
 - a. they counteroffer at a price halfway between list price and the offer to split the difference.
 - b. the offer be rejected so that the offeror will raise the offer to the list price.
 - c. they let the offer period expire without taking any action to make the offeror anxious.
 - d. they accept the offer.
10. After an offer is accepted, the listing agent should
 - a. keep track of escrow progress.
 - b. make certain all papers are signed by the parties.
 - c. make certain that conditions are being met.
 - d. do all of these.

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UNIT TWELVE



REAL ESTATE FINANCING

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- explain how the monetary policy of the Federal Reserve and the government's fiscal policy can affect the availability of funds for mortgage lending;
- describe the effect interest rates have on the real estate marketplace;
- explain the difference between primary and secondary financing and primary and secondary mortgage markets;
- explain the difference between conventional and government-involved financing;
- compare and contrast FHA, VA, and CalVet loans;
- describe different types of loans, including advantages and disadvantages of each; and
- explain the loan-qualifying process, the use of ratios and FICO scores, and the regulations that pertain to real estate finance.

KEY TERMS

adjustable-rate mortgage	fiscal policy	portfolio loans
adjustment period	fixed-rate loan	predatory lending
affordability index	Freddie Mac	primary financing
annual percentage rate (APR)	front-end ratio	primary mortgage market
back-end ratio	Ginnie Mae	private mortgage
blanket trust deed	hard money loans	qualified mortgage
California Housing Finance Agency loans	hybrid loans	qualifying borrowers
CalVet loans	index rate	real estate investment trust
closing the loan	institutional lenders	release clause
commercial banks	insurance	renegotiable-rate mortgage
computerized loan origination	interest-only loans	reserve requirements
conforming loans	jumbo loans	reverse mortgage
construction loan	life insurance company	SAFE
controlled business arrangement	Loan Estimate	savings associations
conventional loans	margin	secondary financing
convertible ARM	monetary policy	secondary mortgage market
cosigner	mortgage banker	seller carryback financing
credit union	mortgage broker	Service Members Civil Relief Act
direct endorsement	mortgage companies	statement
discount points	mortgage loan broker	subprime lender
discount rate	Mortgage Loan Disclosure Statement	take-out loan
Dodd-Frank	mortgage warehousing	third-party originator
due-on-sale clause	negative amortization	TILA-RESPA Integrated Disclosure (TRID) rule
Equal Credit Opportunity Act	nonconforming loans	Truth in Lending Act
Fair Credit Reporting Act	noninstitutional lenders	VA-guaranteed loan
Fannie Mae	open market transactions	verification of employment
Farmer Mac	open-end trust deed	wraparound trust deed
Federal Reserve	option ARM	
FHA-insured loan	origination points	
	packaged loan	
	participation loan	
	payment shock	
	pension fund	
	points	

FEDERAL RESERVE

The **Federal Reserve** is responsible for our **monetary policy**. It seeks to adjust the availability and cost of money so there is steady economic growth with minimum unemployment and inflation in check. The Federal Reserve has three basic controls:

1. **Discount rate.** By raising and lowering the discount rate charged to member banks to borrow funds, the Federal Reserve affects long-term rates charged by lenders. Lower rates fuel the economy, but higher rates are a contractionary economic policy.
2. **Reserve requirements.** By raising and lowering reserve requirements of banks, the amount of available funds to loan is regulated. Less funds for lending means higher interest based on supply and demand factors.
3. **Open market transactions.** The Federal Reserve can buy government securities on the open market to put money into the economy or to sell government securities to take money from the economy to slow growth.

The government **fiscal policy** relates to the government's ability to tax and to spend. By reducing taxes, there is more money to spend, so it is an expansionary fiscal policy. Similarly, increasing taxes would be a contractionary policy. Increasing spending would put more money into the economy, so it would be an expansionary policy, while decreasing spending would be contractionary.

INTEREST RATES AND THE REAL ESTATE MARKET

The health of the real estate industry is directly related to the cost of money or interest rates. Lower interest rates mean lower payments, which in turn means that more people become qualified for loans. With more buyers, we tend to have a seller's market and see real estate prices increase.

Real estate sales had been strong because of affordability brought about by low interest rates. Strong real estate sales also aided construction-related industries, as well as sales of furniture, appliances, and textiles for households.

When interest rates increase, real estate sales tend to decrease. (Sales are related inversely to interest rates.) Rising interest rates affect affordability.

LOAN POINTS

Points are percentages of the loan. They are charged to the borrower at the time the loan is made. One point would be 1% of the loan amount.

Points are either discount points or origination points.

Discount points are monies paid at the time of loan origination that allow the borrower a rate of interest less than originally offered by the lender. Therefore, discount points could be considered prepaid interest. As a rule of thumb, a lender

considers eight points equivalent to 1% difference in a fixed rate loan. So a lender would want two points on a $6\frac{1}{4}\%$ loan if the lender wanted a $6\frac{1}{2}\%$ yield.

Origination points are fees to cover administrative loan costs and lender compensation. As an example, a mortgage broker may want one point to make the loan even though the lender intends to sell the loan at face amount to another lender.

The **affordability index** from the National Association of REALTORS® measures the median family income necessary to support a mortgage for the median-priced home. The index is based on a 30-year fixed-rate mortgage with a 20% down payment at the current Freddie Mac mortgage rate. It is also based on the assumption that total monthly house payments, including taxes and insurance, cannot exceed 30% of gross household income. Because lenders allowed families to pay more than 30% of gross income and because of the variety of loan products offering lower payments, the affordability index best measures changes in housing affordability.

According to the California Association of REALTORS®, in the third quarter of 2021, 28% of California households could afford to purchase the \$814,580 median price home. A minimum annual income of \$148,400 was needed for a monthly payment of \$3,710 including principal, interest, and taxes on a 30-year fixed mortgage at a 3.07% interest rate. Rising interest rates will likely reduce the affordability of homes.

SOURCES OF FUNDS

Almost everyone is at some time a user, a buyer, or a seller of real estate. The average American spends more than 20% of his lifetime income on some form of real estate, either for rental or for purchase as an investment or as a residence. Because real estate is the largest purchase most people make in their lifetimes, few are prepared to pay cash. Thus, the completion of most real estate sales will depend on funds available in the money market at the time of the transaction.

Because most buyers are unable or unwilling to pay cash for real property, long-term financing in the form of a mortgage (or trust deed) loan is necessary. Understanding the use of real estate mortgage money requires an understanding of the sources of these funds. Money to finance real estate purchases is available through three primary money market areas: *directly* from someone or some institution that has accumulated this money, *indirectly* from a lending institution that loans money deposited in customers' accounts, or from investors who purchase loans or collateralized mortgage securities. You should be constantly aware of the status of the money market in your area, including policies of lenders, interest rates, points, and lending costs.

Different lenders offer variations in products (loans) and have different underwriting standards for different types of properties. An experienced agent will help clients select a lender and type of loan whose standards meet the property being purchased, as well as the specific client needs.

PRIMARY AND SECONDARY FINANCING

Primary financing refers to the first loan recorded against the property. Because interest rates are related to risk, primary financing generally has lower interest rates than other loans in which the security interest is secondary (i.e., second trust deeds).

Primary financing refers to first trust deeds, secondary financing to junior loans.

Any junior trust deed is **secondary financing**. Holders of a second trust deed bear a greater risk than holders of a first trust deed; therefore, second trust deeds customarily bear a higher rate of interest. In the event of default of the first trust deed, the holders of the second have to either cure the default and foreclose on the second trust deed or wait until the foreclosure and bid cash. If holders of the second trust deed fail to do either, they may lose their security.

PRIMARY AND SECONDARY MORTGAGE MARKETS

While primary financing refers to first trust deeds, the **primary mortgage market** refers to loans being made directly to borrowers, either first or second trust deeds. The **secondary mortgage market** refers to the resale of existing mortgages and trust deeds.

Four agencies—Fannie Mae (FNMA), Ginnie Mae (GNMA), and Freddie Mac (FHLMC), and Farmer Mac—are responsible for creating and establishing a viable secondary mortgage market. They buy loans originated by others and resell mortgage-backed securities. Their operations have created a national securities market for the sale of real estate debt instruments by the originators to second buyers. Selling the loans frees capital to create more real estate mortgages. The secondary market also minimizes the effects of regional cycles and redistributes the funds from cash-rich areas to cash-poor ones, thus stabilizing the money market.

Fannie Mae

Fannie Mae, formerly the Federal National Mortgage Association (FNMA), was established in 1938 to stimulate the secondary mortgage market by buying FHA-insured and VA-guaranteed mortgages made by private lenders. In 1968, Fannie Mae evolved into a private, profit-oriented corporation that markets its own securities and handles a variety of real estate loans. These loans are purchased (sometimes at a discount) and can be resold to other lenders or investors. Stabilizing the market gives lenders a sense of security and encourages them to make more loans. Because of loan problems, Fannie Mae is again under government conservatorship.

Freddie Mac

Freddie Mac, formerly the Federal Home Loan Mortgage Corporation (FHLMC), was founded with money provided by the 12 Federal Home Loan Banks when new mortgage loans could not be made because money was flowing out of the savings and loan associations (S&Ls). Freddie Mac created needed funds by floating its own securities backed by its pool of mortgages and guaranteed by Ginnie

Mae. This gave S&Ls a secondary market for selling their conventional mortgages. Freddie Mac buys loans that have been closed within one year at specified discount rates.

Both Fannie Mae and Freddie Mac ran into serious financial difficulties because of their purchases of high-risk loans.

Federal Takeover of Fannie Mae and Freddie Mac

In September 2008, the federal government placed a conservatorship over Freddie Mac and Fannie Mae. Huge losses and concerns that the agencies could no longer raise capital to support the U.S. housing market necessitated the takeover. Both agencies are now operating at a profit, and there is political pressure to again place them under private control.

Ginnie Mae

Ginnie Mae, once the Government National Mortgage Association (GNMA), is presently a wholly government-owned agency, but privatization is being considered. Higher-risk—but important—programs, such as urban renewal, low-income housing, and other special-purpose government-backed programs, are financed through this agency. Ginnie Mae participates in the secondary mortgage market through its mortgage-backed securities programs. Qualified mortgage lenders and approved dealers can obtain additional capital for mortgages by pooling a group of homogeneous existing loans and pledging them as collateral. Ginnie Mae guarantees that holders of these securities will receive timely principal and interest payments.

Federal Agricultural Mortgage Corporation

Farmer Mac, the Federal Agricultural Mortgage Corporation, is a government-chartered, but now private, corporation that provides a secondary mortgage market for farm property and rural housing.

CONFORMING LOANS

Conforming loans meet Fannie Mae and Freddie Mac purchase criteria.

A lender that makes a loan either keeps the loan in its portfolio or sells the loan in the secondary mortgage market. Loans that the lender keeps (does not sell) are called **portfolio loans**. Loans that the lender sells are called *nonportfolio loans*. **Conforming loans** are conventional loans that meet the underwriting standards for purchase by Fannie Mae or Freddie Mac. These loans are written for 15-year or 30-year terms and are not assumable. They have strict guidelines regarding down payments and maximum amounts. In the fourth quarter of 2021, a single-family loan had a limit to \$647,200 to be eligible for purchase by Fannie Mae or Freddie Mac (this amount is revised on January 1 of each year) and is higher in some high-housing-cost areas. (In San Francisco, Los Angeles, and New York, the limit is \$970,800.) Because of the ready market for these loans, lenders are willing to make them and to purchase them on the secondary mortgage market. Because of their strict underwriting requirements, the interest rates for conforming loans are generally less than rates charged for **nonconforming loans**.

Loans for amounts of \$647,200 and more are customarily called jumbo loans. Interest rates on **jumbo loans** are higher than rates for conforming loans.

LENDERS

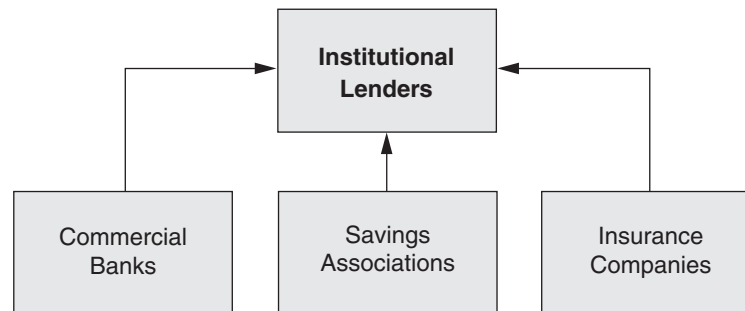
All lenders are interested in the value of the property, the character of the borrower reflected in the FICO score, and the buyers' ability to make the payments.

Lenders can be divided into two groups: institutional lenders and noninstitutional lenders.

Institutional Lenders

Institutional lenders are subject to state and/or federal government regulations. These are major commercial banks, savings associations, and life insurance companies. (See Figure 12.1.)

FIGURE 12.1: Institutional Lenders



Commercial banks. Commercial banks are familiarly known as the “department stores” of financial institutions because of the variety of operations in which they engage. A principal activity of commercial banks is lending money. Commercial banks prefer to make loans to their customers because this preference helps create depositors.

Banks often charge lower loan fees than other institutional lenders. They are quite versatile in the type of loans they may consider, but they seldom allow secondary financing at the time of providing a purchase-money loan.

Commercial banks have been a major source for construction loans. They like the shorter term and higher interest rates of these loans.

Banks have been expanding their home equity loans (second trust deeds). Some offer an open-end line of credit secured by the borrowers' home equity.

Banks in California

In California, banks are either federally chartered or state chartered and are regulated by federal and state laws, respectively. They tend to favor short-term loans and follow relatively conservative appraisal and lending practices. Their real estate loans generally are 80% or less of the appraised value of the property. Borrowers who are unable to put at least 20% down will likely be required to buy **private mortgage insurance** (PMI). A homeowner can request cancellation of the mortgage insurance when the homeowner's equity reaches 20%, payments are current, and there has not been more than one late payment in the prior year. The insurance must be canceled when the homeowner's equity reaches 22% (based on purchase price).

Many banks have also gone into the mortgage banking business. They make loans, which they then sell to other lenders or investors such as pension funds. They may continue to service loans that they sell.

Savings associations. Savings associations, also known as “thrifts” and originally known as savings and loan associations (S&Ls), formerly accounted for more home loans than any other source. After deregulation in the 1980s, they branched into other higher-yielding but higher-risk loans, which led to a great many S&L failures. Like banks, savings associations are state or federally chartered. They are allowed to loan up to 95% of the property's appraised value, although an 80% loan-to-value ratio (LTV) is most usual. The distinction between banks and savings associations has almost disappeared. Many California S&Ls have now become state- or federally chartered banks.

Life insurance companies. The lending policies of **life insurance companies** are governed by the laws of the state in which the company is chartered, the laws of the state in which the loan originates, the policies of management, and the availability of loan funds.

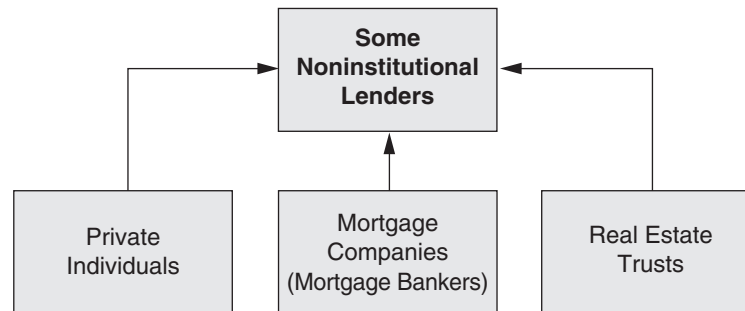
Insurance companies supply many of the loans on properties for which huge loans are required (commercial properties, shopping centers, industrial properties, and hotels). In California, they make loans for up to 75% of the property's market value. Their commercial loans are commonly for 25 to 30 years. Insurance companies' interest rates often are lower than those of banks or savings associations. These loans seldom have due-on-sale clauses.

Insurance companies sometimes demand an equity position as a limited partner as a condition of making a loan (**participation loan**). Many insurance companies were motivated by the benefit of an equity position coupled with the rapid depreciation allowed by the Tax Reform Act of 1981 to make large commercial loans. (Insurance company lending in the mid-1980s contributed to the overbuilding of shopping centers and office structures in many areas of the country.)

Noninstitutional Lenders

Noninstitutional lenders that make real estate loans include private individuals who use their own funds and real estate investment trusts, pension funds, et cetera and are not federally or state-regulated financial institutions. (See Figure 12.2.)

FIGURE 12.2: Noninstitutional Lenders



Mortgage Bankers or Mortgage Companies

Mortgage bankers can be licensed in California by either the Department of Real Estate or the Department of Corporations.

Mortgage bankers make loans using a line of credit from another lending institution and usually resell the loans on the secondary mortgage market. This resale of existing loans allows mortgage bankers to free up capital on their line of credit in order to make new loans. They usually have a close working relationship with one or more lenders and receive daily rate sheets. **Mortgage companies** are currently the largest single source of residential mortgage loan origination in California. You will see that the lender websites listed in the appendix are primarily mortgage bankers.

Mortgage companies make money on origination fees, as well as on loan servicing fees. Though they generally resell the loans that they originate, mortgage companies often continue to service these loans.

Mortgage companies might hold off selling mortgages that they originated if they believe that mortgage interest rates will drop. If they are right, mortgages made at higher rates could be sold at a premium above face value. The mortgage banker might borrow on this inventory of loans held for resale. This is known as **mortgage warehousing**.

Mortgage companies are careful in qualifying borrowers because loans that fail to conform to Fannie Mae and Freddie Mac purchase requirements are difficult to sell on the secondary mortgage market. Mortgage bankers will generally only make loans when they have a buyer for them. They seldom make loans that they do not intend to resell.

Mortgage companies are able to make many difficult loans that most banks would decline, such as loans for mixed-use properties or loans where buyers have had credit problems or low FICO scores. They might place such loans with **subprime lenders** that make difficult loans at a higher rate of interest. Many of the financial problems, beginning in 2008, were the result of high-risk loans originated by mortgage companies because there were buyers for them. In many cases the loans were used to back securities that were sold throughout the world. Nonperforming

loans and foreclosure have led to severe financial difficulties by those holding those loans and/or their mortgage-backed securities.

Mortgage Loan Broker

Mortgage brokers are strictly middlemen who bring lenders and borrowers together.

A **mortgage loan broker** is a person who acts for compensation in negotiating a new loan and is required to be licensed as a real estate broker or salesperson. No separate license is required. Real estate brokers who negotiate mortgage loans under the Mortgage Loan Brokerage Law are limited in the amount that they may charge as a commission for arranging the loan and for costs and expenses of making the loan. Loans on first trust deeds of \$30,000 or more or on second trust deeds of \$20,000 or more do not come within the purview of the law. Commissions and expenses are negotiable between the broker and the buyer.

Because most loans arranged by mortgage loan brokers are first trust deeds of \$30,000 or more or second trust deeds of \$20,000 or more, the limitations on loan cost and commissions seldom become an issue. The lender can charge whatever the market will bear for loans above the amounts stated.

Maximum commissions are:

- First trust deeds (less than \$30,000)—5% of the loan if less than three years; 10% if three years or more
- Second trust deeds (less than \$20,000)—5% of the loan if less than two years; 10% if at least two years but less than three years; 15% if three years or more

If the loan comes under the purview of the law, the expenses of making the loan charged to the borrower (i.e., appraisal fees, escrow fees, title charges, notary fees, recording fees, and credit investigation fees) cannot exceed 5% of the principal amount of the loan. However, if 5% of the loan is less than \$390, the broker may charge up to that amount. Regardless of the size of the loan, the buyer (borrower) cannot be charged more than \$700 for costs and expenses. In no event may the maximum be charged if it exceeds the actual costs and expenses incurred.

Because mortgage loan brokers can arrange loans for noninstitutional as well as institutional lenders, they are often able to place loans that many direct lenders turn down because of perceived problems with the borrower or the loan security. These loans could require higher loan costs and/or a higher rate of interest. Mortgage loan brokers are required to provide a **mortgage loan disclosure statement** to borrowers. The statement must be used with a written loan estimate in conformity with RESPA rules.

Mortgage loan brokers arrange a wide variety of loans. Because the mortgage loan broker is a middleman, the security for the loan must satisfy the *lender's criteria* for the loan. Mortgage loan brokers generally do not service the loans they arrange.

The mortgage broker brings together individual lenders and borrowers.

Scope of lending activity—real estate brokers. There are three distinct areas of lending activity that a real estate broker can engage in:

1. **Hard money makers and arrangers**—A **hard money loan** is a cash loan rather than an extension, such as seller financing. Articles V and VII of the real estate law primarily deal with hard money loans where the mortgage broker acts as an intermediary, bringing together lenders and borrowers. This activity is commonly known as *mortgage brokerage*, and the real estate licensee is acting as a **mortgage broker**.

The loans are not made in the broker's name. They are made in the name of the lender. Most of the hard money loans are equity loans rather than purchase loans. Lenders are often private individuals.

2. **Third-party originators**—Third-party originators prepare loan applications for borrowers, which they submit to lenders. They may be agents of the borrower or the lender or dual agents of both borrower and lender. Out-of-state lenders that wish to invest directly in California mortgages frequently use third-party originators, as do pension plans and trusts. Thus, lenders that are not prepared to take loan applications in California can be direct lenders rather than having to purchase loans that were originated by others in the secondary mortgage market. They primarily deal in purchase-money loans.

3. **Mortgage bankers**—Not all mortgage bankers are real estate brokers. Some mortgage bankers are licensed under the California Residential Mortgage Lending Act, which is administered by the Department of Corporations. A mortgage banker must elect which license to operate under. Thus, we have two state agencies, the Department of Real Estate and the Department of Corporations, regulating the same type of activity, depending on which license the mortgage banker is operating under. (The broker makes loans while operating as a mortgage banker; however, the broker only arranges loans as a third party when operating as a mortgage broker.)

Mortgage bankers are regulated by either the Bureau of Real Estate or the Department of Corporations.

Real estate investment trusts. The **real estate investment trust (REIT)** was created in 1960 to encourage small investors to pool their resources with others to raise venture capital for real estate transactions. To qualify as a REIT, the trust must have at least 100 investors, and 90% of the trust's income must be distributed annually to its investors.

While a number of equity trusts invests solely in ownership of real property, there are many mortgage trusts that invest their money in mortgages, either directly or through a mortgage company. There also are hybrid trusts that invest in both equity ownership and mortgages.

Pension funds. At one time, **pension funds** invested primarily in stocks. However, they perceived mortgages to be safe yet high-return investments and they became important players in the mortgage market. They made loans on large projects. Pension funds generally purchased loans originated by mortgage

companies or worked through mortgage brokers. They often take an equity position in large developments.

Credit unions. At one time, **credit unions** offered mostly low-dollar loans for consumer purchases. Credit unions have evolved to become major lenders. While they limit loans to members, they have expanded their loan activity. Unlike profit-oriented lenders, their loans are more community based. Besides home equity loans and home purchase loans, credit unions have expanded their community lender role to include construction and development loans. Credit unions in many ways now resemble commercial banks.

Seller Carryback Financing

When conventional financing is not available to a buyer in the amount required or is too costly, a seller often can be persuaded to carry back a first or second mortgage on property to facilitate a sale. If a seller does not need the cash and the purchaser will pay a rate of interest higher than that provided by a certificate of deposit, the seller is a likely candidate for carryback financing.

Generally, **seller carryback financing** is customized to the needs of the parties. Such loans are generally fixed-rate loans with payments based on a 30-year amortization but due and payable in five to seven years. Many sellers are not interested in having their money tied up for longer periods of time.

Because most loans now have due-on-sale clauses, seller carryback financing is limited to situations where the property is owned by the seller free of loans, where the lender will agree to a loan assumption, where the existing loan does not have a due-on-sale clause, or where the seller will hold a secondary loan after the buyer obtains primary financing.

SAFE Act

The Federal Secure and Fair Enforcement Mortgage Licensing Act (SAFE). SAFE was enacted for consumer protection and to reduce fraud. The act requires licensing for mortgage loan originators. Anyone who accepts compensation for taking a loan application, offers or negotiates terms of a 1–4-residential-unit mortgage loan, or who is compensated by a mortgage originator must have an **MLO endorsement** on their license. The endorsement requires education, testing, and reporting.

TYPES OF LOANS

While most 1–4-unit dwellings still are financed by conventional loans, the choice of a loan is no longer a foregone conclusion. Both buyers and sellers need to know what is currently available, which loan best suits their requirements, and even where to go for financing. With real estate firms allying themselves with financial institutions, even the players are changing every day.

CONVENTIONAL LOANS

By definition, a **conventional loan** is any loan that does not involve government participation. The advantages of conventional over government-backed loans are that conventional loans involve less red tape and shorter processing time. Government loans do not have equivalent flexibility. Buyers can obtain a larger loan amount, and because there are more sources for conventional loans, borrowers have the option of choosing a wide variety of fixed-rate or adjustable-rate loans.

Conventional loans have no government insurance or guarantee.

Disadvantages of conventional loans in comparison with government-backed loans can include higher down payments and prepayment penalties. Furthermore, private mortgage insurance (PMI) may be required if a purchaser has less than a 20% down payment.

How to Compare Loans

Borrowers should compare loans on the basis of the following:

- LTV (the percentage of the appraised value that the lender will lend determines down payment requirements; loan to value ratio)
- Interest rate and if it can be changed
- Loan costs and fees required
- Prepayment penalties
- Length of loan (longer-term loans result in lower monthly payments)
- Amount of fixed monthly payment
- Initial rate, adjustment period, caps, index, and margin of adjustable-rate loans

GOVERNMENT LOANS

Government Loans

There are several types of government-involved loans, including **FHA-insured loans**, **VA-guaranteed loans**, and **CalVet loans**. There are also California Housing Finance Agency loans. These types of loans are compared in Figure 12.3.

FIGURE 12.3: Government Home Loan Programs

	FHA-Insured	VA-Guaranteed (GI)	CalVet
Who is eligible?	Anyone who qualifies	U.S. veterans	California residents who have met the veteran requirements
Who makes the loans?	Approved lending institutions	Approved lending institutions	Calif. Dept. of Veterans Affairs (mortgage brokers can originate loans)
Type of loan	Insured	Guaranteed loan	Land contract
Points and fees	Origination fee up to 1% plus upfront mortgage insurance of 1.75% of loan plus annual premium	Negotiable loan fees plus a funding fee (may be financed)	1.25% to 3% (may be financed)
Interest rates	May be negotiated	May be negotiated	Flexible rate based on cost of bonds. Can change annually.
What is the maximum you can pay for a home?	No limit	Loan cannot exceed appraisal	Cannot exceed the CalVet appraisal (certificate of reason-able value [CRV])
Maximum loan allowed	115% of county's median home price	No money down, to county limit; loan can't exceed the certificate of reasonable value (CRV)	125% of Fannie Mae maximum
Term	Usually 30 years	Maximum 30 years	30 years
Down payment	Minimum 3.5%	None required for loans up to county limit	0% to 5%
Secondary financing	Not allowed at time of sale, but can be placed later	Generally not allowed at time of sale, but can be placed later	Yes, but the 1st and 2nd cannot exceed 90% of the CalVet appraisal
Prepayment penalty	None	None	None
Assumability	Loans before Dec. 15, 1989, are assumable; subsequent loans assumable with FHA approval	Loans before Mar. 1, 1988, are assumable; subsequent loans require buyer to qualify	Assumable with prior CalVet approval

Federal Housing Administration (FHA)

The purposes of the Federal Housing Administration are stated in its preamble: to “encourage improvement in housing standards and conditions, to provide a system of mutual mortgage insurance, and for other purposes.”

There are two divisions under which this protection is granted: Title I and Title II. In general, the following types of loans are available:

- Title I—loans for modernization, repairs, or alterations on existing homes
- Title II—loans for purchase or construction of residential structures

Section 203(b) of Title II accounts for most loans for 1–4-unit residences. FHA loans provide high LTVs based on appraisal.

The maximum FHA loan amount will vary by region, but the purchaser generally must have a minimum down payment of 3½%.

The down payment may come from a gift, but there is a ban on seller and non-profit group assistance programs.

The *mortgage insurance premium* (MIP) must be paid at the time of loan origination. Based on the down payment, an MIP is also added to payments for the life of the loan.

Lenders may be authorized to make the underwriting decision that a loan qualifies for FHA insurance. This is known as **direct endorsement**, and it serves to speed up the loan processing time. Because of foreclosure problems, down payment requirements have increased for most other loans. As of January 1, 2009, FHA down payments were increased from 3% to 3.5%. Despite this increase, the low down payment requirement for FHA loans compared with other loans resulted in an increase in FHA loan applications.

A recent rule change allows borrowers who have gone through a foreclosure, bankruptcy, or other adverse events, and who have repaired their credit, to be eligible for an FHA-insured loan after one year. Previously, they had to wait at least three years before they would qualify for a new government-backed loan. To qualify for the shorter period, borrowers must show that their credit problems were caused by job loss or reduction in income beyond their control.

HUD (Department of Housing and Urban Development)

FHA loans are insured by HUD. The insurance protects the lender should the borrower default. Loans insured by HUD must be **qualified mortgages**. To be qualified, the loan must

- be for 30 years or less;
- limit points and fees to 3%;
- have periodic payments without toxic features such as interest only, negative amortization, or balloon payments; and
- have a debt-to-income ratio of no more than 43% of income.

Department of Veterans Affairs (VA)

The Servicemen's Readjustment Act of 1944 (GI Bill) was intended to help veterans to make the necessary readjustments to civilian life, particularly to assist them in the acquisition of homes. The VA does not make loans, but it guarantees a portion of the loan.

No down payment is required for loans. VA loans can be used to

- buy or build an owner-occupied home;
- alter, repair, or improve real estate;
- purchase a mobile home; and
- refinance existing mortgage loans for dwellings owned and occupied by veterans.

To qualify for a VA-guaranteed loan, an individual must have had 181 days of active service. An appraiser approved by the VA checks the property.

The VA charges a one-time funding fee that varies from 1.4% to 3.6% of the loan based on the down payment.

The loan cannot exceed the appraisal known as the *certificate of reasonable value* (CRV). The certificate of reasonable value is based on a VA appraisal made for insurance purposes. (The loan amount is not regulated. The loan guarantee is the amount the VA will pay your lender if you default. The maximum guarantee is 40% of the loan up to \$36,000. The limit in 2022 is \$647,200.)

With a CalVet loan, the veteran is buying under a land contract.

CalVet loans. Under the CalVet loan program (the California Farm and Home Purchase Program), California veterans can acquire a suitable farm or a single-family residence at a low financing cost. The State of California actually takes title to the property and sells it to the veteran under a land contract. Following are some features of the CalVet loan:

- CalVet loans can now be arranged through lenders approved to handle CalVet loans.
- CalVet loans are now processed with VA guidelines. The loans are available to peacetime as well as wartime veterans and active-duty military. The maximum home loan amount is 125% of the maximum for a Fannie Mae conforming loan; the 2022 limit is \$809,000.
- Depending on the type of CalVet loan, the down payment can range from 0 to 5%. They have a limit of up to \$589,785.
- 2015 CalVet loans start at 4.25% interest for a 30-year home loan (higher rate for mobile homes).
- CalVet loans have an origination fee of 1%.
- CalVet loans have a funding fee of 1.25% to 3.30%.
- Mortgage brokers who originate and process CalVet loans receive a \$350 processing fee plus a 1% origination fee.
- The state raises the funds for CalVet loans by issuing tax-exempt bonds.
- While CalVet loans have a variable interest rate, the rate is seldom changed.

WEB LINK



For more information on CalVet loans, call 1-800-952-5626 or check the website at www.calvet.ca.gov/calvet-programs/home-loans/.

The California Housing Finance Agency (CalHFA). CalHFA is California's self-supporting housing bank that offers fixed-rate conventional and interest-only financing at low rates, and down payment assistance for first-time homebuyers. CalHFA uses no appropriated taxpayer dollars for its programs but utilizes a tax-exempt bond program. Loans are for low-income and moderate-income buyers. The loans are FHA insured.

Programs of CalHFA include the following:

- Interest-only programs for the first 5 years of a 35-year fixed-rate mortgage
- Conventional 30-year fixed-rate mortgage
- Down-payment assistance programs for teachers in high-priority schools
- Down-payment assistance for designated high-cost counties
- Down-payment assistance for new homes based on school facility fees paid by the builder
- Down-payment assistance up to 3% to low-income buyers using FHA-insured loans
- Down-payment and closing-cost assistance in community revitalization areas
- Lower interest rates for lower-income disabled purchasers
- Lower interest rates for homebuyers receiving financial assistance from an approved government agency

WEB LINK



CalHFA housing programs include mortgage insurance that makes home payments for up to six months if a borrower involuntarily loses her job. Eligibility requirements can be ascertained by visiting the website, www.calhfa.ca.gov.

Other Types of Mortgages and Trust Deeds

Open-end trust deed. An **open-end trust deed** allows the borrower to receive additional loan money up to an agreed amount, using the same trust deed or mortgage as security. (It is like having a credit card with a set limit.) A home equity line of credit is an example of an open-end loan.

Blanket trust deed. With a **blanket trust deed**, the borrower uses more than one parcel of property as security. This type of document should contain a **release clause** that allows the partial reconveyance of separate parcels of property on repayment of a portion of the loan.

Construction loan. This unamortized loan, usually for three years or less, is given until permanent financing is in place.

Take-out loan. This is permanent financing that takes out (replaces) short-term financing such as gap or construction loans.

Packaged loan. A loan that includes personal property, as well as real property.

Wraparound trust deed. A **wraparound trust deed** also is called an *all-inclusive trust deed*. There are times when it is almost impossible for buyers to refinance an existing loan on investment real estate to raise additional capital. With a wraparound mortgage the existing loan is not disturbed. The seller continues the payments on the existing mortgage or trust deed while giving the borrower

a new, increased loan, usually at a higher interest rate. The new loan is for the amount due on the existing loan plus the amount of the seller's equity being financed.

To use a wraparound loan, the underlying loan must not have a **due-on-sale clause**. A due-on-sale clause, also known as an alienation clause, accelerates loan payments, making the entire loan amount due upon a sale. These clauses are enforceable by lenders. While a number of ways have been devised to get around the clauses, the methods basically are based on deception. Advocating use of such methods could subject you to liability and disciplinary action, as well as result in a buyer losing a property because of the inability to obtain a new loan. Because of possible problems, legal counsel should be sought before a wraparound loan is used.

Gap loan. These loans are usually short-term loans, such as loans between construction loans and the **take-out loan** (permanent financing) or by buyers who have found a new home but have not yet sold their prior residence. They are also called *swing loans* or *bridge loans*. They generally bear a relatively high rate of interest.

Fixed-rate loans. Fixed-rate loans have an unchanging rate of interest over the entire term of the loan. Lenders will make fixed-rate long-term amortized loans because they must in order to be competitive, but they generally prefer adjustable-rate or shorter-term loans. The reason is that they were hurt in the past by long-term **fixed-rate loans**.

To encourage borrowers to use other types of loans, lenders offer lower loan costs than for fixed-rate loans and even lower interest rates. With current low index rates, many adjustable-rate loans are pegged so low that lenders are again pushing fixed-rate loans.

15-year vs. 30-year fixed-rate loans. If a buyer is able to pay the additional monthly payment on a 15-year loan, significant savings are possible compared with a 30-year loan.

As an example, at 7½% interest, the monthly payment on a \$100,000 loan for 15 years comes to \$927.02. For a 30-year loan having the same rate of interest, the monthly payment is \$699.22.

For the 30-year loan, total payments equal as follows:

$$12 \text{ (months)} \times 30 \text{ (years)} \times \$699.22 = \$251,719.20$$

or interest of \$151,719.20.

For a 15-year loan the total payments are as follows:

$$12 \text{ (months)} \times 15 \text{ (years)} \times \$927.02 = \$166,863.60$$

or interest payments of \$66,863.60.

The interest paid on the 30-year loan is more than twice the interest of the 15-year loan, and the payments are only \$227.80 higher than the 30-year loan payments.

The savings are likely to be significantly greater than those shown in the example because 15-year loans usually have an interest rate from 0.375% to 0.75% lower than a similar 30-year loan. Lower interest rates are used because shorter-term loans are considered by lenders to present less risk.

40-year loans. To help offset higher home prices that have reduced housing affordability, a few lenders may offer 40-year loans. While the payments are reduced by the longer amortization period, making payments for an extra 10 years might not be in the buyer's best long-term interest if the buyer can qualify and make the payments on a 30-year loan. As an example, for a 30-year loan for \$300,000 at 6% interest, the monthly payment amounts to \$1,798.68. For the same loan at 40 years, the payments would be \$1,650.66, or \$148.02 less than for the 30-year loan. However, total payments for the 30-year loan would be \$647,524, but the 40-year loan total payments would be \$792,316, or \$144,792 greater. FHA will not insure a loan greater than 30 years.

Interest-only loans. In order to qualify buyers for home loans, many lenders formerly offered **interest-only loans**. These are also known as straight notes. The borrower makes payments of interest only for a set period of time, such as five years. At the end of the period, the borrower must either pay off the loan in full or make amortized payments. As an example, interest only on a 6%, \$300,000 loan would be \$1,500 per month, which would be \$300 less than an amortized payment.

80-20 loans. For borrowers who didn't have a down payment, 80-20 loans were made before the mortgage meltdown. Eighty percent of the purchase price was made by a conventional lender. Because the loans are for only 80% of value, private mortgage insurance is not required. The balance of the purchase price, 20%, was covered with a second trust deed at a higher rate of interest. The second trust deed was also likely to have higher origination costs.

The 80-20 loans, as well as other low or no down payment loans, were a factor in buyers walking away from their homes when their loans exceeded the value of the homes. The resultant foreclosure sales were a factor in decreasing housing prices in 2008. Because of the foreclosure problems, lenders no longer make 80-20 loans.

Renegotiable-rate mortgages. **Renegotiable-rate mortgages**, also known as rollover loans, usually have payments based on a 30-year amortization. However, they are only partially amortized. Generally, they are due in full in five or seven years. The lender will rewrite the loan at this time at the current interest rate, or the borrower can refinance with another lender.

Because the lender is not locked into the interest rate for a long period, lenders offer these loans for a lower interest rate than for the fixed 30-year rate. Frequently, the rate is about 1% less than fixed-rate loans. Lenders also might offer lower loan origination fees and costs.

Hybrid loans. Lenders will offer combination fixed–adjustable-rate loans such as a 5–30, where the first 5 years are at a fixed rate and the balance of the loan (25 years) is at an adjustable rate. In order to sell borrowers on the **hybrid loan**, the fixed-rate portion of the loan has an interest rate less than that for a 30-year fixed-rate loan. This allows borrowers to qualify for the loan when they might not qualify for a 30-year fixed-rate loan.

Reverse mortgage (reverse annuity mortgage). This unusual loan is not for home purchases. A **reverse mortgage** is a loan whereby the lender annuitizes the value of the owner's equity and either makes monthly payments or pays a flat amount to the borrowers based on the equity and the age of the borrowers. The loan is not repaid until the borrowers die or the property is sold. Homeowners must be age 62 or older to qualify for a reverse mortgage.

A normal loan charges simple interest; that is, the interest for the previous month is paid with each payment and is charged on the principal balance only. A reverse mortgage, however, has compound interest (interest is charged on interest). Each month, the interest is greater than the previous month because the principal has increased.

Reverse mortgages have higher loan fees than most other loans. Several lenders have agreed to make settlements because of alleged unconscionable loan costs and fees for their reverse mortgages.

The reverse mortgage cannot be entered into until seven days after the applicant has met with a reverse mortgage counselor.

Piggyback loan. This is really two loans, first and second, made by a lender at the same time.

Adjustable-rate mortgage (ARM). In contrast to a fixed-rate loan, the interest rate in an **adjustable-rate mortgage** changes periodically, usually in relation to an index, with payments going up or down accordingly. Lenders usually charge lower initial interest rates for ARMs than for fixed-rate loans, which makes the ARM easier on the borrower's pocketbook than a fixed-rate loan for the same amount and also makes it easier for the borrower to qualify for the loan. In addition, it could mean that the borrower could qualify for a larger loan, because lenders sometimes qualify buyers on the basis of current income and the first year's payment. An ARM might be less expensive over a long period than a fixed-rate loan. If interest rates remain at current low rates.

Another advantage of an ARM is that it generally does not have prepayment penalties. Therefore, if the borrower expects to be reselling within a relatively short period, the absence of this penalty could give the ARM a significant advantage over loans requiring prepayment penalties.

To induce borrowers to choose an ARM, lenders may offer lower loan origination costs than for fixed-rate loans. Lower origination costs also make ARMs attractive to borrowers who intend to resell within a few years.

Against these advantages, the buyer must weigh the risk that an increase in interest rates will lead to higher monthly payments in the future. The trade-off with an ARM is that the borrower obtains a lower rate in exchange for assuming more risk. The borrower considering an ARM should envision a worst-case scenario with interest increasing to the set limit to fully understand the degree of risk involved.

There is a myriad of ARM variations. Here are four basic questions a borrower should consider:

1. Is my income likely to rise enough to cover higher mortgage payments if interest rates increase?
2. Will I be taking on other sizable debt such as a car purchase or school tuition in the near future?
3. How long do I plan to own this home? If I plan to sell soon, rate increases may not pose a problem.
4. Can my payments increase even if interest rates do not increase?

If the buyer can answer these questions satisfactorily, an ARM might be a loan to consider. However, the borrower would have to consider which ARM best meets their needs. In evaluating and comparing ARMs, it is necessary to understand a number of terms, including adjustment period, index rate, margin, interest rate cap, overall cap, payment cap, negative amortization, option ARMs, and convertible ARMs.

Adjustment period. The **adjustment period** of an ARM is the period of time between one interest rate and monthly payment change and the next. (Some ARMs have two adjustments: one for the rate, the other for the payment.) This period is different for each ARM; it may occur once a month, every six months, once a year, or even every three years. A loan with an adjustment period of one year is called a *one-year ARM*, and the interest rate can change once each year. Lenders often have a longer adjustment period for the first adjustment. Different lenders use different adjustment periods. Because a single lender might offer four different types of ARMs, each with a different adjustment period, it is important for the borrower to read the loan documents and understand the adjustment period before the loan documents are cut or signed.

The index rate plus the margin equals the interest rate.

Index and margin. Most lenders tie ARM interest-rate changes to changes of an **index rate**. The only requirements a lender must meet in selecting an interest index are as follows:

- The index control cannot be the lender.
- The index must be readily available to and verifiable by the public.

These indexes usually go up and down with the general movement of interest rates. If the index moves up, so does the interest rate on the loan, meaning the borrower will probably have to make higher monthly payments. If the index rate goes down, interest rate and monthly payments may go down as well.

Lenders base ARM rates on a variety of indexes; in fact, the index can be almost any interest rate the lender selects. Also, different lenders may offer a variety of ARMs, and each may have a different index and margin. Among the most common indexes are six-month, three-year, or five-year Treasury securities (T-bills) and national or regional cost of funds to savings associations (11th district cost of funds of the Federal Home Loan Bank Board [FHLBB]). The Federal Reserve is developing new benchmarks. Borrowers and their agents should ask which index will be used and how often it changes. Also, find out how the index has behaved in the past and where it is published, so the borrower can trace it in the future.

To determine the interest rate on an ARM, lenders add to the index rate a few percentage points (two to three), called the **margin** (also *differential* or *spread*).

$$\text{index} + \text{margin} = \text{ARM interest rate}$$

$$\text{Elastic, subject to change} = \text{Set figure} \quad \text{Limited by caps}$$

The amount of the margin can differ from one lender to another, but it is always constant over the life of the loan. Loans that have lower loan-origination costs tend to have higher margins. Upward adjustments of the ARM interest rate are made at the lender's option, but downward adjustments are mandatory. Actual adjustments to the borrowers' mortgage interest rate can occur only on a predetermined time schedule (the adjustment period, as described). On each loan, the borrowers' terms, including initial rate, caps, index, margin, interest-rate-change frequency, and payment-change frequency, are stated in the note that accompanies the deed of trust. Terms will vary from lender to lender.

In comparing ARMs, look at both the index and the margin for each plan. Some indexes have higher average values, but they are usually used with lower margins. Be sure to discuss the margin with the lender.

In calculating an ARM payment, the first period is calculated in exactly the same way as a fixed-rate loan payment. After the first-period adjustment, it is as if the borrower were starting a new loan: calculations must be made to figure the loan balance and the number of payments left, and the new interest rate must be taken into account. Of course, because no one can anticipate accurately whether interest rates will increase or decrease, in analyzing various ARMs a borrower is considering, the agent can accurately calculate the loan payment for only the first period.

ARM discounts. Some lenders offer initial ARM rates that are lower than the sum of the index and the margin. Such rates, called *discounted rates*, *introductory rates*, *tickler rates*, or *teaser rates*, are usually combined with loan fees (points) and with higher interest rates after the discount expires. Many lenders offer introductory rates that are significantly below market interest rates. The discount rates may expire after the first adjustment period (for example, after one month, six months, or one year). At the end of the introductory discount rate period, the ARM interest rate automatically increases to the contract interest rate (index plus margin). This can mean a substantial increase in the borrower's interest rate and monthly payment. If the index rate has moved upward, the interest rate and

payment adjustment can be even higher. Even if the index rate has decreased, the borrower's interest rate and monthly payment will likely be adjusted upward at the end of the introductory period.

Some lenders use the first year's payment as the basis for qualifying a borrower for a loan. So even if a lender approves the loan based on the low introductory rate, it is the borrowers' responsibility to determine whether they will be able to afford payments in later years, when the discount expires and the rate is adjusted. With a discounted ARM, any savings made during the discounted period may be offset during the life of the loan or be included in the price of the home. In fact, this kind of loan subjects borrowers to greater risk, including that of **payment shock**, which may occur when the mortgage payment rises at the first adjustment.

Whenever the lender's advertised qualifying interest rate is lower than the lender's current ARM index rate plus margin, a below-market rate is being offered. Assume the current index rate is 5% and the margin 2%. That makes the ARM rate 7%. If the advertised qualifying introductory rate is 5%, the introductory rate is 2% below the market rate, making it a discounted rate. Any qualifying rate below 7% in this case is called an *introductory rate* or a *below-market rate*.

Many lenders describe the introductory rate in their documentation as follows: "There is no rate change in the first six months. Thereafter, the interest rate is established by adding a rate differential (margin) to the index provided in the note."

The **annual percentage rate (APR)** gives a more accurate picture of the cost of a loan and must be disclosed by law. The APR differs from the nominal interest rate in that the APR includes the interest as well as the costs associated with obtaining the loan. The APR represents a rate based on a buyer's net loan proceeds, which is the loan amount less the cost of credit. This is outlined in the RESPA letter sent within three days of application for a loan. When calculating the APR, lenders who offer below-market rates must account for the higher index rate that will be charged in the future.

A borrower who chooses an ARM impulsively because of a low initial rate could end up in difficult straits. Agents can help borrowers protect themselves from large increases by looking at a mortgage with certain features that are explained in the next sections. Remember that all loans are different and that many different types of ARMs exist. Agents can help borrowers shop around until they find the loan that will meet their needs with minimal risk.

Caps can limit payment increases and loan interest.

Caps on an ARM. Most ARMs have caps that protect borrowers from increases in interest rates or monthly payments beyond an amount specified in the note. If loans have no interest rate or payment caps, borrowers might be exposed to unlimited upward adjustments in monthly payments, should interest rates rise.

Caps vary from lender to lender. The borrower needs to check with the lender to determine the cap rates in the loan under consideration. Two types of interest-rate caps are used:

1. A *periodic cap* limits the interest-rate increase or decrease from one adjustment period to the next. These caps are usually 1 percentage point to 2 percentage points or sometimes $7\frac{1}{2}\%$ of the previous period's payment amount.
2. A *lifetime cap* or overall cap limits the interest-rate increase over the life of the loan. Assume the introductory rate is 4% and is below the market rate and at the first adjustment becomes 5%. The overall cap will be attached to the 5%; thus, a 5% cap could mean an interest rate as high as 10%.

An ARM usually has both a periodic and an overall interest rate cap. A drop in the index does not always lead to an immediate drop in monthly payments. In fact, with some ARMs that have interest rate caps, the monthly payment may increase, even though the index rate has stayed the same or declined. This may happen after an interest rate cap has been holding the interest rate below the sum of the index plus margin. When the next adjustment period comes along and the interest rate stays the same or declines. The payments could still increase because of prior increases in the index.

The rate on a loan can go up at any scheduled adjustment when the index plus margin is higher than the rate before the adjustment. As stated earlier, an ARM usually has an overall interest rate cap. Some ARMs have a stated cap, such as 15%; others specify a percentage over the initial rate, such as an overall interest rate cap of 5%. Again, caps vary from lender to lender and sometimes from loan to loan offered by the same lender. It is important for the borrowers to know what caps are available and what they are obtaining with a loan.

As previously stated, some ARMs include a payment cap that limits the monthly payment increase at the time of each adjustment, usually to a percentage of the previous payment. In other words, if the payment cap is $7\frac{1}{2}\%$, a payment of \$1,000 could not increase or decrease by more than \$75 in the next adjustment period.

Because payment caps limit only the amount of payment increases and not interest-rate increases, payments sometimes do not cover all the interest due on a loan. This is sometimes called **negative amortization** and means the mortgage balance is increasing. The interest shortage in the payment was formerly added to the loan. As of 2010, most negative amortization loans were banned in California.

Option ARMs. Option ARMs were adjustable-rate loans where the borrower had the option of making the payments necessary to amortize the loan or to make a minimum payment that was less than the interest. The result was negative amortization, with the amount due on the principal increasing each month. At a stated future date, such as five years, the borrower would start making payments

to amortize the loan. The low minimum payment of the option ARM allowed borrowers to more easily qualify for a loan. The borrowers hoped that increases in income would allow full payments at the later date and that increased property value would offset the negative amortization. A major California bank indicated in 2005 that 87% of its ARMs were option ARMs. There were many foreclosures in option ARMs when payments increased on homes whose value had decreased. Because of lender risks, option ARMs are a thing of the past. In October 2009, then-Governor Schwarzenegger signed emergency legislation banning new negative amortization residential loan originations in California.

Convertible ARMs. Borrowers whose financial circumstances may change at some time during the term of the loan may decide that they do not want to risk any further changes in the interest rate and payment amount; or interest rates may drop, and the borrower might want to lock in the lower rate. In such cases, a conversion clause becomes important. A **convertible ARM** clause is one that allows the borrower to convert the ARM to a fixed-rate loan at designated times. When the borrower converts, the new rate is generally set at the current market rate for fixed-rate loans plus at least 0.375 of 1% as a servicing premium.

Assumable ARMs. Although most ARMs are assumable, lenders normally place conditions on the assumption of the loan. The lender may require that the new borrower supply credit information, complete a credit application, and meet the customary credit standards applied by the lender. In some cases, the lender may charge points or other fees when a loan is assumed.

Some lenders allow only one assumption. Other lenders allow assumption but adjust the overall cap or the margin to the rate in effect at the time of assumption. Some lenders allow assumptions with the original lifetime cap already in effect. Because conditions of assumption vary greatly among lenders, the documentation should be checked for this information.

Figure 12.4 contains a list of questions that a borrower should ask, and the agent or the lender should be able to answer, when the borrower is looking for an ARM.

Loan Costs

In comparing loans, you must also compare loan costs. Lenders break down loan costs so that consumers will understand exactly what they are paying for. No matter what the cost or fee is called, the bottom line is the total of all loan costs. For many loans, these costs can be added to the amount of the loan.

FIGURE 12.4: ARM Checklist

- What is the initial (or qualifying) interest rate on the ARM?
- How long is this initial rate in effect? When is the first rate and/or payment adjustment?
- To what index is the ARM's interest rate tied?
- What is the current level of the index?
- What margin above the index is used to calculate the actual ARM rate?
- How can the index and the margin be used to calculate the mortgage rate initially and at the first adjustment?
- What will happen to the interest rate at the first adjustment, assuming the index rate stays the same?
- What is the annual percentage rate (APR) of the loan? How does this compare with the APR on other ARMs and that on a fixed-rate loan?
- How often is the interest rate on the mortgage adjusted? How often does the monthly payment change?
- Does the ARM have a periodic interest rate cap? If so, what is the limit on the increase in the ARM rate at each adjustment? If the index rate increases more than this limit, can the unused change in the index be carried over to the next adjustment period? Does the periodic interest rate cap apply to the first adjustment? Does the periodic rate cap apply to the rate decreases, as well as to any increases?
- Does the ARM have an overall cap rate? If so, what are the maximum and minimum rates?
- Does the ARM have a payment cap? If so, what is the maximum that the monthly payment can increase at each adjustment? Does the payment cap apply to the first payment adjustment?
- Can the borrower convert this ARM to a fixed-rate loan at any time? Does this ARM have an open-end credit feature? What other features does this ARM have?
- Is this ARM assumable? Is this assumption feature limited to one time only? What are the qualification features? Will the original caps still be in effect? If not, what are the new caps?
- Does the ARM have a loan-to-value ratio greater than 80%? If so, is private mortgage insurance required on the loan?

Calculating Loan Costs

- An initial application fee
- A flat fee in addition to loan points
- Loan points
- Loan escrow costs (if not a purchase-money loan)
- Title insurance (if not a purchase-money loan)
- Document fees
- Private mortgage insurance
- A number of charges developed by different lenders, such as processing fees, which are generally fees for miscellaneous lender services (These fees are often called garbage fees.)

CHOOSING AMONG LOAN CATEGORIES

Lenders offer a number of different basic loan classifications, with different lenders offering different variations. Because of differing loan provisions, interest rates, and loan costs, it becomes difficult for borrowers to decide which loan type and lender best meet their particular needs.

Borrowers will find that they must shop for loans the same way they shop for any other large purchase. There are significant variations in costs among lenders. In some cases, loan costs can be negotiated.

Borrowers who believe they will remain in a property for many years likely will want an overall lower interest rate and be willing to pay higher loan-origination costs (including discount points) to obtain that rate.

Borrowers who expect to remain in a property for only a few years likely will want a loan that can be prepaid without a penalty and that has low loan-origination costs. Such borrowers likely will be willing to pay a higher interest rate to obtain the lower origination costs. Generally, lower loan-origination fees mean a higher interest rate.

Borrowers who believe interest rates are about as low as they will go are likely to want a long-term fixed-rate mortgage. Borrowers who believe interest rates are likely to drop probably will want a loan without a prepayment penalty, a short-term loan that can be rewritten at a future interest rate, or an adjustable-rate loan that can be converted to a fixed-rate loan.

Borrowers who have very low down payments would be interested in loans having a high LTV, such as FHA-insured loans, VA-guaranteed loans, and loans with PMI. And if borrowers have a low income for loan-qualifying purposes, they likely will want an ARM with low initial payments, a longer-term loan, or an interest-only loan.

For many buyers, the deciding factor will be the additional improvement in lifestyle afforded by using an ARM. Usually an ARM allows borrowers to buy more home for their money than would be possible with a fixed-rate loan. Assume fixed-rate loans are at 6%, and ARMs have a lower interest rate. If the agent knows how much the buyer can afford for a monthly payment, the agent can calculate the loan amount for which the borrower can qualify. The easiest way to do this is simply to use an amortization table and check the qualifying rate to determine how large a loan that payment will support.

The real estate agent needs to understand the lending business and be willing to communicate with the lender when he does not know why a certain interest rate, point, loan fee, or PMI is required, or does not understand other conditions of the loan.

One of the fundamental misunderstandings about financing arises because real estate buyers and sellers do not realize that money is a commodity. Money is like a loaf of bread, a car, a home, or any other commodity, and it is bought and sold.

When it is bought and sold, the lender expects to make a profit on the sale. Some like to compare loaning money to renting. The payment of interest is the cost of renting the money, and points are like first and last months' rent or the security deposit, but unlike security deposits, it is not refundable. Every lender needs to make a profit on the rental of money to stay in business.

If the lender reduces one cost to a borrower in one area, the lender generally will raise it in another area to compensate for the loss. As an example, a lender offering a lower interest rate may charge higher loan costs, as well as a larger prepayment penalty, than a lender offering the higher interest rate. Help your borrower choose the loan that offers the combination of features that best meets that borrower's specific needs.

Computerized Loan Origination

Computerized loan origination (CLO) is now readily available on the internet. Various websites provide interest rates, points, and APRs for various types of loans. Agents can complete a loan application on the internet and in many cases have loan approval, subject to verifications, before the client leaves your office.

There are also several large multilender shopping sites for loans that allow a borrower to view loan offerings from many lenders on a competitive basis. These sites are updated daily.

A borrower can evaluate loan types, points, costs, and rates to make an informed decision and then be qualified by the selected lender, as well as complete the loan application, all on the internet. The result of competition is often lower loan costs for the borrower. Because of this advantage, many buyers' agents use these shopping sites.

The websites also avoid the possibility that the borrower is being charged an overage. An *overage* is a charge, typically points, by a mortgage banker that exceeds what a lender would charge. Fannie Mae has a Desktop Underwriter and Desktop Originator website, which is the leading loan underwriting system. The system helps lenders consider rent payment history in mortgage credit evaluations. Mortgage brokers can obtain access to the site.

WEB LINK



Three of the other major loan shopping websites are as follows:

1. www.eloan.com
2. www.quickenloans.com
3. www.bankrate.com

We suggest that you gain familiarity with these websites, as well as local mortgage companies, and the process of qualification and loan application. You should also be familiar with the other sites, including local market lenders that are used by your office.

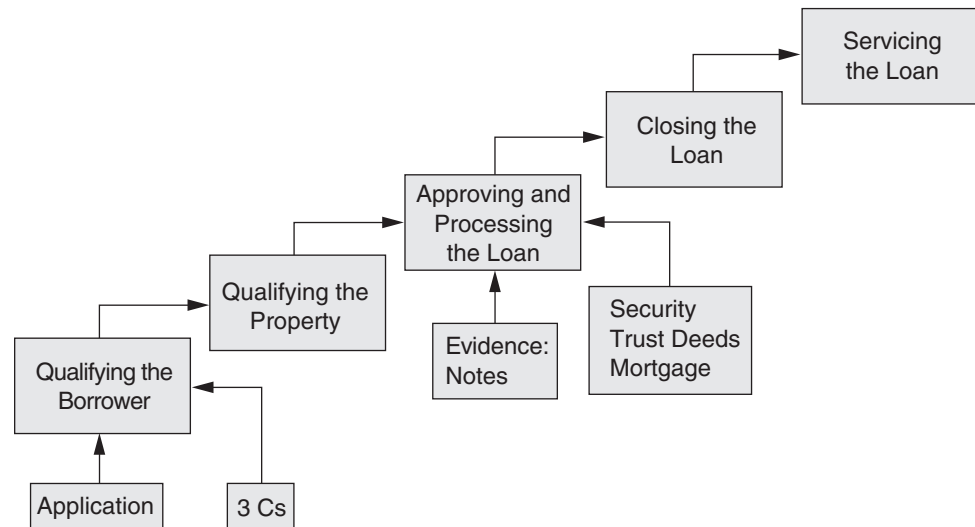
When a real estate agent charges a fee to a borrower for CLO, a disclosure must be provided to the borrower in a format specified by RESPA. The disclosure must inform the borrower that the fee can be avoided by approaching lenders directly.

THE FINANCING PROCESS

The basic steps for obtaining real estate financing are much the same with any type of lender. Figure 12.5 illustrates the following five-step financing process:

1. Qualifying the borrower
2. Qualifying the property
3. Approving and processing the loan
4. Closing the loan
5. Servicing the loan

FIGURE 12.5: The Financing Process



Qualifying the Borrower

In understanding lender requirements for **qualifying borrowers**, you should realize that lender requirements often are dictated by the secondary mortgage market. Unless a lender expects to hold on to a loan for the life of the loan, the lender wants the loan to meet the requirements of a holder in the secondary market, such as Fannie Mae.

Unit 9 introduced you to lender qualifying requirements in prequalifying prospective purchasers. Lenders first ask prospective borrowers to complete an application form. To verify the accuracy of the information, the loan officer checks with past employers, requests verification of deposits from the bank(s), and contacts references. The loan officer also may obtain a Dun & Bradstreet report (in case of commercial loans) and a credit report by an outside agency, so there is no question of the borrower's ability to repay the loan.

Most lenders use the “three Cs”—*character*, *capacity*, and *collateral*—as a screening device to determine whether the borrower meets the qualifications set by the lender.

Character. With regard to prospective borrowers’ character, lenders consider their attitude toward financial obligations as evidenced by their track record of borrowing and repaying loans evidenced by credit reports. Lenders also try to ascertain whether borrowers are honest in their dealings.

The desire to pay is very difficult to measure. There are methods used by a lender to determine the borrower’s desire to make timely payments, such as **FICO score**. Fair Isaac Co. developed this scoring system used by most lenders. Following are the primary factors used for scoring:

- Late payments
- Negative credit information
- How long credit has been established
- Amount of credit used versus credit available
- Length of time at present residence
- Employment history

Credit scores range from about 300 to 850. Scores above 720 are regarded by lenders as being good and qualify for the lowest rate. Scores above 780 can result in ever lower loan costs as lenders compete for these borrowers.

Traditionally the cut-off point between prime and subprime mortgages was 620, but some mortgage companies now put the line at 680 to 700 with full documentation of an applicant’s income and assets. Many lenders are no longer willing to take the risk of 620 FICO scores for nonconforming loans, (loans that are not to be sold to Freddie Mac or Fannie Mae).

The important qualifying ratios are 28% and 36%.

Capacity. In considering borrowers’ capacity, lenders want to know their ability to repay the debt. Capacity is strengthened by an occupation that ensures a steady income. The level of present debts and obligations also is a factor; too much debt may prevent a borrower from discharging a new obligation.

Lenders will consider second-job income if the applicant has a history of second-job income.

Lending institutions sometimes take overtime wages into consideration. Other lenders will consider both spouses’ wages in computing the gross income of the borrower, even if only one spouse is applying for the loan. Occasionally, a lender will request a **cosigner**—a person with additional capital who agrees to share liability for the loan—to strengthen the borrower’s application. Lenders also might reduce down payment requirements with a cosigner.

When a lender qualifies a borrower, the lender is attempting to answer two questions:

1. Can the borrower afford the payments?
2. Will the borrower make the payments on time? (This question refers to character.)

To determine whether the borrower has the capacity to make the monthly payments, the lender needs to answer these questions:

- Does the borrower earn enough to make the payments?
- Will the income be a steady source of income?
- Does the borrower have the down payment?
- Can the borrower make the payments on time?

The lender is going to verify the applicant's ability to make timely monthly payments and the applicant's employment history (steady stream of income). The lender will want to know the down payment on the property before determining the loan amount. This information is usually confirmed by the lender through the use of verifications of deposits and employment.

Once the lender knows the loan amount, it can calculate the *principal, interest, taxes, and insurance (PITI)* payment. This is the first step in the qualification process. These are qualifying programs available for your smartphone or computer.

FIGURE 12.6: Qualifying Ratios

Front-End Rate

$$\frac{\text{PITI (Principal, Interest, Taxes, \& Insurance)}}{\text{Borrowers Monthly Gross Income}} = 0.28 \text{ or less}$$

Back-End Rate

$$\frac{\text{Total Loan Obligations}}{\text{Borrowers Monthly Gross Income}} = 0.36 \text{ or less}$$

To qualify the borrower, we examine two ratios (percentages). The **front-end ratio**, also called the *top ratio (mortgage payment ratio)*, is the mortgage payment (PITI) divided by the borrower's gross income. Conforming loans require that the front-end ratio be approximately 28% or less. The reason it is called the top ratio is because it is at the top of the form (above the bottom ratio). The other ratio is the **back-end ratio**, or *bottom ratio (total obligation ratio)*. This ratio should be approximately 36% or less to qualify for a conforming loan (see Figure 12.6). Nonconforming loans may have different values for these ratios. The preceding ratios (28% and 36%) are for loans that do not require PMI. For loans with PMI, the ratios might be top equals 33% and bottom equals 38%.

EXAMPLE Assume the buyers have a gross income of \$4,000 per month and wish to buy a home where the principal, interest, and tax payments will amount to \$1,100.

$$\frac{1,100 \text{ (PITI)}}{4,000 \text{ (gross)}} = 0.275 \text{ or } 27.5\%$$

The purchasers would meet the qualifying front-end ratio of 28% or less.

Assume the same purchasers have long-term debt payments of \$900 per month, so PITI plus debt payments would mean a total monthly obligation of \$2,000.

$$\frac{2,000 \text{ (total payments)}}{4,000 \text{ (gross income)}} = 0.5 \text{ or } 50\%$$

The buyers would not qualify for the loan. Although the buyers met the front-end ratio of 28% or less, they failed to meet the back-end ratio of 36% or less.

From the **verification of employment** and other financial information, the lender determines the borrower's gross income. Lenders require a signed statement from the borrower to permit a check with the borrower's employer to verify wages and length of employment. *Gross income* is defined as the income made by the borrower before taxes and deductions. For a married couple, the gross income for a loan is generally the total gross income of one spouse plus the total gross income of the other spouse. Employment usually must be verified for two years.

The lender also needs to determine the monthly long-term rotating credit bills owed by the borrower. These include car payments, credit cards, furniture payments, student loans, and other bank or credit union loans, including mortgage loans. If a credit bill will be paid in less than 10 months, it is not included.

Qualifying the Property

Collateral refers to the value of the security for the loan.

Collateral. After the loan is granted, the lender has to rely for a long time on the value of the security for the loan for the safety of the investment, should the borrower default. For this reason, lenders consider it important to qualify the property, as well as the borrower.

Because the underlying security for almost every property loan is the property itself, lenders require a careful valuation of the property, the *collateral*. The value depends on the property's location, age, architecture, physical condition, zoning, floor plan, general appearance, and market conditions. The lender will have an appraisal done by the financial institution's appraiser or by an outside fee appraiser. Brokers who are familiar with lending policies of loan companies are in a good position to make accurate and helpful estimates.

WEB LINK



The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (15 USC 1639e) prohibits attempts by lenders or brokers to influence appraisal. (See www.law.cornell.edu/uscode/text/15/1639e.)

The act prohibits the following:

- Withholding or threatening to withhold payments
- Promising benefits for higher appraisals
- Basing compensation on appraisal valuation
- Setting predetermined value for appraiser
- Removal of an appraiser from a list of appraisers without evidence of violation of Uniform Standards of Professional Appraisal Practice (USPAP)
- Ordering a second appraisal without evidence an appraisal was flawed

Some **subprime lenders** that specialize in high-risk borrowers made loans for the full appraisal amount, and even loans exceeding the appraisal if the risk factor was sufficiently offset by the higher interest rate.

While competition for loans led to low down and no down financing instruments, losses by lenders have tightened the controls so that few lenders are willing to make no-down-payment loans, even with interest premiums.

Approving and Processing the Loan

Processing involves drawing up loan papers, preparing disclosure forms regarding loan fees, and issuing instructions for the escrow and title companies. Loan papers include the *promissory note* (the evidence of the debt) and the security instruments (the *trust deed* or *mortgage*).

Closing the Loan

Closing the loan involves signing all the loan papers and preparing the closing statements. First-time buyers, especially, are often confused by the various fees involved. Real estate licensees play a vital role in making this transition period smooth.

Servicing the Loan

After the title has been transferred and the escrow closed, the loan-servicing portion of the transaction begins. This refers to the recordkeeping process once the loan has been placed. Some lenders do their own servicing, whereas others use outside sources. The goal of loan servicing is to see that the borrower makes timely payments so that the lender makes the expected yield on the loan.

REGULATION OF REAL ESTATE FINANCING

Because this is a real estate practices text, all references to the regulations governing real estate financing will, of necessity, be brief. For further information relating to this subject, consult a real estate finance book.

Truth in Lending Act

The *Truth in Lending Act* (*Regulation Z*) is a key portion of the federal Consumer Credit Protection Act passed in 1969. The Truth in Lending Act applies to banks, savings associations, credit unions, consumer finance companies, and residential mortgage brokers. This disclosure act requires that lenders reveal to customers, either by delivery or mailing, how much they're being charged for credit in terms of an annual percentage rate (APR). Customers can then make credit cost comparisons among various credit sources. The lender must wait at least seven days after disclosure to consummate the loan.

The act gives individuals seeking credit a right of rescission of the contract. This means that under certain circumstances a customer has the right to cancel a credit transaction up until midnight of the third business day after signing. This right of rescission applies to loans that place a lien on the borrower's residence. The rescission rights do not apply to primary financing (first trust deed) to finance the purchase of the borrower's residence (purchase-money loan).

TILA-RESPA Integrated Disclosure (TRID) Rule

The regulations contained in the **TILA-RESPA Integrated Disclosure (TRID) rule** apply only to first loans on 1–4-unit residential properties. This is another disclosure act. Within three business days of the date of the loan application, a lender must furnish the buyer with an itemized list of all closing costs that will be encountered in escrow. This must be a **Loan Estimate** provided to every person requesting credit. Each charge for each settlement service the buyer is likely to incur must be expressed as a dollar amount or range. The lender also must furnish a copy of a special information booklet prepared by the secretary of the Department of Housing and Urban Development (HUD). It must be delivered or placed in the mail to the applicant no later than three business days after the application is received.

The good-faith estimate required by RESPA has been combined with early truth-in-lending disclosures to include the following:

- Estimated monthly payment
- Estimated taxes, insurance, and assessments
- Estimated closing costs and cash required to close
- Services that can and cannot be shopped for

A **controlled business arrangement** (CBA) is a situation where a broker offers “one-stop shopping” for a number of broker-controlled services, such as financing arrangements, home inspection, title insurance, property insurance, and escrow. These controlled businesses could be located within the broker's premises. RESPA permits such controlled business arrangements as long as the consumer is clearly informed of the relationship between the broker and the service providers and other providers are available. Fees may not be exchanged between the companies simply for referrals. A broker-controlled mortgage company must have its own

employees and cannot contract out its services or it would violate RESPA provisions that prohibit kickbacks for referral services.

It's the position of the attorney general of California that a broker may not pay referral fees to a real estate salesperson for referral to broker-affiliated services.

Fair Credit Reporting Act

The **Fair Credit Reporting Act** affects credit reporting agencies and users of credit information. If a loan is rejected because of information disclosed in a credit report, the borrower must be notified and is entitled to know all the information the agency has in its file on the buyer, as well as the sources and the names of all creditors who received reports within the past six months.

Equal Credit Opportunity Act

The federal **Equal Credit Opportunity Act** prohibits lending discrimination based on an applicant's race, color, religion, national origin, marital status, age, and whether or not the source of income is a public assistance program or Social Security.

Helping Families Save Their Homes Act of 2009

Bankruptcy judges now have the authority to modify mortgages on principal residences. They can order a reduction in the loan interest rate and/or extend the payment period as long as 40 years.

Homestead Protection

The homeowner is protected against foreclosure of the residence because of an unsecured obligation. The exemption from foreclosure is the greater of the following:

- The medium sales price for a single-family home in the country in the calendar year, not to exceed \$604,000
- \$300,000—the exemption amount adjusted annually for inflation

California Homeowners Bill of Rights

The California Homeowner Protection Act set forth the California Homeowners Bill of Rights:

- Dual track foreclosure is not allowed. The foreclosure process cannot be advanced after the homeowners complete an application for loan modification and the application has not been fully reviewed.
- Homeowners must have a single point of contact.
- Lenders must verify all documents filed.
- Borrowers can seek redress for material violations of the foreclosure process.

- Tenant lease rights must be honored; if not, a 90-day notice must be given.
- Homeowners can compel owners of foreclosed homes in areas to remedy code violations.

The Homeowners Bill of Rights has been extended to widows and widowers of homeowners.

California Mortgage Relief Act

This program is for homeowners who have fallen behind on their mortgage payments because of the pandemic. The program provides a one-time grant up to \$80,000 that need not be repaid. The applicant's income must be below the county's median income.

Applicants must

- be receiving public assistance,
- be severally housing burdened, or
- have no alternative mortgage options.

Service Members Civil Relief Act of 2003

This act applies to citizen military members called to active duty, not career military. The act provides the following:

- A maximum of 6% interest on credit obligations entered into before active duty. Interest above 6% must be forgiven.
- Foreclosures may be postponed by the court until 90 days after active service ceases.
- A court order is required for evictions when rent is \$4,089.62 per month or less. (2021 – changes annually.)
- If transferred, service personnel may terminate any lease.

Predatory Lending

California law prohibits predatory lending. Loans made to homeowners by finance companies, real estate brokers, and residential mortgage lenders without considering the borrowers' ability to repay are considered **predatory lending**. Violations subject the lender to civil penalties. This law was enacted because some loans were made where the lenders actually wanted the borrowers to default in order to foreclose on the properties securing the loans.

Some loans had high loan costs that were added to the loan balance. When borrowers had trouble with repayment, they were encouraged to refinance to another loan with high loan costs that offered no economic benefit to the borrower and reduced the borrowers' equity.

Borrowers now are protected in the following ways:

- Prepayment penalties for the first 36 months of a loan are strictly limited and not allowed thereafter.
- Loans with terms of five years or less must be amortized.
- Loans other than first trust deeds cannot include negative amortization, and even then it must be properly disclosed.
- Requiring payment advances from loan proceeds are prohibited.
- Interest rates cannot be increased as a result of default.
- The person originating the loan must reasonably believe the borrower will be able to repay the loan from resources other than the borrower's equity in the property.
- Payments made directly to contractors from proceeds of home improvement loans are prohibited. (Payments jointly to the homeowner and the contractor are allowed.)
- Recommending that a consumer default on an existing loan or debt is prohibited.
- Loans with call provisions allowing the lender to accelerate debt at its discretion are generally prohibited.
- Refinancing that does not result in identifiable tangible benefits to the consumer is prohibited.
- Steering or directing a consumer to a loan product with a higher-risk grade than the consumer would otherwise qualify for, or with a higher cost than the consumer would qualify for, is prohibited.
- Structuring a loan as an open line of credit to avoid predatory lending restrictions is prohibited.
- All consumer fraud is prohibited.

See Financial Code 4970-4979.8.

SUMMARY

The Federal Reserve is responsible for monetary policy and has control over the availability and cost of funds by controlling the discount rate charged member banks, by controlling the reserve requirements of banks, and by buying and selling government securities on the open market and controlling the supply of currency. The fiscal policy of the government to raise and lower taxes, as well as to spend, also affects the availability of funds.

While low interest rates increase housing affordability and can lead to a strong market, high rates have an opposite effect.

Whereas primary financing refers to first trust deeds and secondary financing refers to junior liens, the primary and secondary mortgage markets are far different. The

primary mortgage market refers to lenders making loans direct to borrowers; the secondary mortgage market refers to the sale of existing loans.

Fannie Mae (the Federal National Mortgage Association) and Freddie Mac (the Federal Home Loan Mortgage Corporation) create a secondary mortgage market by buying FHA, VA, and conforming conventional loans. Conforming loans are loans that meet the standards established by Fannie Mae.

Institutional lenders such as banks, savings associations, and life insurance companies are major sources of primary real estate financing. Noninstitutional lenders include mortgage companies, which originate most real estate loans today. Mortgage companies (mortgage bankers) generally sell loans in the secondary market or act as loan correspondents for other lenders.

Mortgage loan brokers are real estate brokers who serve as middlemen for loans. These loans generally have a high loan cost and bear a higher rate of interest than do loans from institutional lenders. Mortgage loan brokers must provide a Mortgage Loan Disclosure Statement to borrowers. Other noninstitutional lenders include private individuals who use their own funds and real estate investment trusts.

Seller carryback financing is also a source of funding for real estate purchases.

Conventional loans are loans made without any government participation, guarantee, or insurance.

Government participation loans provide for lower down payment requirements and include FHA, VA, and CalVet loans.

The California Housing Finance Agency provides low rates and low down payment loans to first-time homebuyers.

Today, borrowers have a wide choice of types of loans and loan variations, including fixed-rate loans, renegotiable-rate mortgages, reverse mortgages, adjustable-rate mortgages, interest-only loans, 80-20 loans, and 40-year loans. The special features of the loans vary by lender. Buyers must analyze their needs and the important factors of down payment, loan costs, interest, assumability, convertibility, loan term, qualifying rate of interest, and so forth, as they pertain to the borrowers' needs.

The internet provides a convenient and efficient way to shop for loans, as well as to complete and submit loan applications.

The financing process involves qualifying the buyer, using front-end and back-end ratios and FICO scores, qualifying the property, approving and processing the loan, closing the loan, and servicing the loan.

The Truth in Lending Act and the Real Estate Settlement Procedures Act are federal regulations concerning lending activities. The Equal Credit Opportunity Act prohibits lender discrimination based on public assistance programs being the source of income.

The good-faith estimate of loan costs, formerly required by RESPA, has been combined with truth-in-lending disclosures for simplification purposes as mandated by Dodd-Frank.

Brokers and lenders are prohibited from seeking to influence appraisals.

Predatory lending practices are prohibited.

CLASS DISCUSSION TOPICS

1. Using a front-end (top) ratio of 33% and a back-end (bottom) ratio of 38%, qualify a buyer earning \$100,000 per year for a 30-year loan of \$400,000 with an 8% interest rate. Assume taxes at \$5,000 per year and insurance at \$1,000 per year. Assume the buyer is making payments on loans of \$43,000, and the monthly payments are \$2,080.
2. Obtain the ARM terms from three different lenders. Lay them out on paper, showing the differences. Which loan would be best suited for a person having what needs?
3. Discuss prequalification practices of local lenders.
4. Complete a loan application for a fictitious borrower, using realistic income, expense, debt, and savings figures. How large a conforming loan will this fictitious applicant qualify for?
5. Bring to class one current-events article dealing with some aspect of real estate practice.

UNIT QUIZ

1. A loan covering more than one property would be a
 - a. compound loan.
 - b. blanket encumbrance.
 - c. subordinated loan.
 - d. reverse mortgage.
2. What type of mortgage is MOST likely to have compound interest?
 - a. Reverse mortgage
 - b. Renegotiable-rate mortgage
 - c. Adjustable-rate mortgage
 - d. Straight mortgage
3. The difference between the interest rate of an index and the rate charged by a lender under an adjustable-rate mortgage is known as the
 - a. discount.
 - b. gap.
 - c. margin.
 - d. cap.
4. A lender who believes interest rates will be rising significantly will be *LEAST* interested in
 - a. a hybrid mortgage.
 - b. a 30-year fixed-rate mortgage.
 - c. a 15-year fixed-rate mortgage.
 - d. an adjustable-rate mortgage.
5. A danger that an adjustable-rate mortgage poses to a buyer is
 - a. higher payments if interest rates increase.
 - b. a longer payment period if interest rates increase.
 - c. that the margin will increase.
 - d. none of these.
6. An adjustable-rate loan index is 6% at the time a loan is made. The margin for the loan is 2½%. With a 5% lifetime cap, the highest the interest rate could go is
 - a. 6%.
 - b. 8½%.
 - c. 11%.
 - d. 13½%.
7. A convertible ARM is a loan that can be changed to
 - a. a shorter-term loan.
 - b. a fixed-rate loan.
 - c. another property.
 - d. another borrower.

8. A buyer intends to sell a house within two years. The buyer would prefer
 - a. a loan with no prepayment penalty.
 - b. a loan with low initial loan costs.
 - c. an assumable loan.
 - d. all of these.
9. Which loan type is MOST likely to meet all the criteria of question 8?
 - a. Renegotiable-rate mortgage
 - b. Adjustable-rate mortgage
 - c. Fixed-rate mortgage
 - d. Reverse mortgage
10. An expansionary policy of the Federal Reserve would be to
 - a. lower taxes.
 - b. increase the discount rate.
 - c. buy government securities.
 - d. raise bank reserve requirements.

13

UNIT THIRTEEN



ESCROW AND TITLE INSURANCE

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- define *escrow* and explain the difference between northern and southern California escrows;
- describe the requirements of an escrow and an escrow’s responsibility;
- explain the requirements of escrow licensing and laws governing the escrow;
- describe escrow procedures; and
- explain the role played by title insurance and the difference between standard and extended coverage policies.

KEY TERMS

ALTA policy	demand statement	proration
amend the escrow	escrow	rebate law
instructions	escrow agent	recurring costs
beneficiary statement	escrow instructions	special title insurance
closing costs	escrow officer	policies
Closing Disclosure	extended policy	standard policy
CLTA policy	good funds	title insurance
credits	impound account	title plant
debits	marketable title	
deed of reconveyance	preliminary title report	

ESCROW

The word *escrow* is derived from the French word *escroue*, meaning scroll or roll of writing. An owner of real property executed an instrument in the form of a deed, conveying land to another party on the fulfillment of certain conditions. This instrument, the *escroue*, was given to a third person with instructions that it would take effect as a deed on the performance of an act or the occurrence of an event, such as payment of a designated sum of money. The term was taken in English as **escrow**, meaning “a deed, a bond, money, or a piece of property held in trust by a third party, to be turned over to the grantee only on fulfillment of a condition.”

Escrow is the last step in a property transaction. The California Financial Code defines *escrow* as follows:

Escrow means any transaction wherein one person for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property or other things of value to a third person to be held by such third person until the happening of a specified event. The performance is then to be delivered by such third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor, or any agent or employee or any of the latter.

This definition has been changed somewhat, and the activities of an escrow agent have been expanded considerably. In brief, an escrow agent is an impartial third party or “stakeholder who receives and disburses documents, money, and papers from every party involved in a transaction, such as a sale of real estate.” The escrow operates as a neutral depository.

The business that conducts the escrow is considered the **escrow agent**. The individual who handles the escrow in the office of the escrow agent is the **escrow officer**.

California escrow agents are licensed by the Department of Financial Protection and Innovation (DFPI).

Escrow Requirements

When the buyer offers a sum of money to the seller and the seller’s acceptance is transmitted to the buyer, a binding contract is formed. Generally, this is the first requirement for a sales escrow. Escrow is created on the conditional delivery of transfer instruments and monies to a third party.

Although escrows are not generally required by law in California, they have become an almost indispensable mechanism in this state to protect the parties involved in exchanges, leases, and sales of securities, loans, business opportunity sales, mobile home sales, and primarily real property sales.

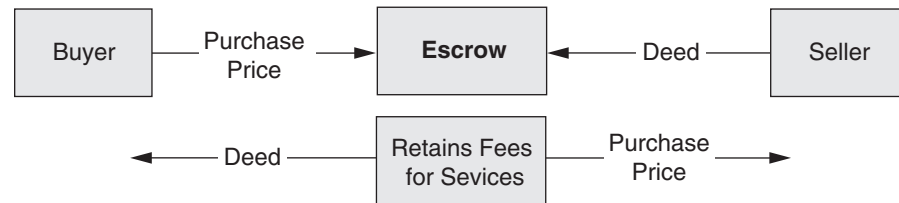
In some states, the listing real estate office handles escrow functions. In some states, attorneys are used for real estate closings. In some communities, the local

lender handles the closing functions. However, closings are primarily handled by either third-party escrows or title companies in California.

Escrow Responsibility

The escrow agent holds all money and documents during the transaction. When conditions agreed upon by the buyer and the seller are met, the deed and the monies involved are disbursed concurrently to the appropriate parties. (See Figure 13.1.) Funds must be **good funds** before they can be disbursed. Good funds include cash, cashier's checks, and personal checks that have cleared.

FIGURE 13.1: Escrow Responsibility



Broker Responsibility

Once the escrow instructions have been signed, the escrow acts in a dual-agency capacity to carry out the instructions of the buyer and the seller. However, the broker still has agency duties.

The broker should track the escrow to make certain that the escrow is receiving what it requires, when it is required. If there are problems concerning the escrow, the broker should notify the parties and attempt to resolve these problems.

The broker also should monitor the loan application and keep in contact with the lender to avoid or resolve any problems or delays.

Parties to an Escrow

Buyers. When buyers have performed in full (paid the purchase price), they are entitled to a deed transferring title, subject only to encumbrances agreed on by both parties. Buyers do not want to pay sellers until the buyers know they are certain of obtaining title to the property as agreed. While the title search is being conducted, the buyers' deposits are held in escrow.

Sellers. Although sellers may have made a firm contract to sell their real property, they do not want to give up their title until they are certain of receiving their money. They therefore retain legal title to the property as security until they have the money in hand. The sellers' legal title usually is transferred by deed. The title is placed in escrow until buyers have produced the full purchase price for the property. If a seller dies before a transaction has been completed, that seller's right to the unpaid part of the purchase price may pass to the heirs. If a buyer dies, the heirs may be required to continue with the purchase. However, the loan may be affected owing to qualification.

Lenders. In lending money to buyers to complete a purchase, lenders, like buyers, do not want to commit their funds without assurance that titles to the properties in question are clear. Therefore, impartial third parties (escrow agents) hold money, deeds, and other documents until liens have been paid off and clear titles have been confirmed. Thereafter, it is the escrow agent's responsibility to see that the proper disbursements are made.

The broker is not a party to an escrow.

Brokers. Real estate agents, unless principals to the transaction, are not parties to the escrow. While the agent is not a party to the escrow, agents should understand escrow procedure so that they can both monitor the escrow to avoid delays and other problems and explain the escrow procedures to their clients and help them comply with escrow requirements. Once the escrow has been opened, the escrow may not make any changes to the escrow instructions based on orders of a real estate agent unless authorized to do so by the principals. However, the escrow instructions might provide for the payment of the commission out of escrow and stipulate that the broker's commission rights cannot be canceled. On a case-by-case basis, the broker can authorize that a commission be paid directly to a salesperson out of broker-entitled funds upon a closing.

Escrow Agents

In California, escrow companies licensed by the DFPI must be structured as corporations. This includes companies conducting escrows using the internet. Individuals cannot be licensed under the escrow law, but certain organizations and individuals are permitted to act as escrow agents without licensure. These include the following:

Escrows are corporations under the jurisdiction of the Commissioner of Corporations.

- Banks
- Attorneys (to act as an escrow, an attorney must have had a prior client relationship with a party to the escrow)
- Real estate brokers
- Title and trust companies
- Savings associations

In some northern California areas, escrow transactions are handled by title insurance companies; they usually process the escrow and issue the title insurance policy together. In southern California, escrow companies handle most escrow transactions with a title company issuing the title insurance separately. In some northern California areas, there are *separate (unilateral) escrow instructions* for each of the parties. In southern California, the parties sign *joint (bilateral) escrow instructions*. There are other regional deviations in the way escrows operate.

In Unit 10, you saw that the purchase agreement can be combined with joint escrow instructions such as the CAR form *California Residential Purchase Agreement and Joint Escrow Instructions*.

Selection of Escrow Holder

The parties to the escrow determine who shall be the escrow holder. In a real estate sales agreement, the buyer will customarily identify the escrow, and the seller, by acceptance of the agreement, agrees to the escrow selected.

Broker as Escrow

WEB LINK



The real estate broker exemption from licensing as an escrow is applicable only when the broker represents the buyer or the seller or is a principal in the transaction. The escrow function is therefore incidental to the broker's business and the exemption cannot be a veil through which a primarily escrow business is conducted. The broker may charge for services. Some larger offices have escrow services as a separate profit center for their operations. A number of computer escrow programs are available to aid in this function. Check the website www.softprocorp.com to learn about one such program.

A broker can act as an unlicensed escrow only if the broker is a principal or represents the buyer or the seller.

While brokers are exempt from the licensing requirements for their own transactions, this exemption applies only to brokers. Brokers cannot delegate escrow duties to others. The exemption is not available to any association of brokers for the purpose of conducting escrows for the group.

Real estate brokers cannot advertise that they conduct escrow business unless specifying that such services are only in connection with the real estate brokerage business. Brokers are also prohibited from using a fictitious or corporate name that contains the word *escrow*. While acting as an escrow, brokers must put aside agency relationships, as well as any special interests, and adopt the position of a neutral depository, the same as any other escrow.

Escrow funds held by a broker must be placed in a special trust account, subject to periodic inspection by the Commissioner of Corporations and, at the broker's own expense, subject to an independent annual audit.

A broker who conducts five or more escrows in a calendar year or conducts escrows totaling \$1 million or more must file an annual report with the DRE as to the number of escrows conducted and the dollar amount. The report must be filed within 60 days of end of calendar year. Failure to report as required will result in a penalty of \$50 per day for the first 30 days and then \$100 per day thereafter, up to \$10,000. Failure to pay the penalty can result in suspension or revocation of license (penalties go to the Consumer Recovery Account).

A broker can be licensed separately as an escrow and operate the escrow business in a controlled business arrangement. (See RESPA, Unit 12.)

Requirements for DFPI Escrow Licensure

Any real estate broker applying for a DFPI escrow license under the Escrow Act must

- pay an application fee;
- pass a background check;
- meet minimum financial requirements;
- meet minimum experience requirements (managers must have at least five years of responsible escrow experience);
- furnish a surety bond for \$25,000 to \$50,000;
- arrange for the fidelity bonding of responsible employees;
- be a member of the Escrow Agents' Fidelity Corporation (EAFC);
- set up a trust fund for all monies deposited in escrow;
- keep accurate records, subject to audit at any time by the Commissioner of Corporations and the Department of Real Estate; and
- submit to an independent audit annually at its own expense.

Laws Governing Escrow

No escrow licensee may

- disseminate misleading or deceptive statements referring to its supervision by the State of California;
- describe either orally or in writing any transaction that is not included under the definition of escrow in the California Financial Code;
- pay referral fees to anyone except a regular employee of its own escrow company;
- solicit or accept escrow instructions or amended or supplemental instructions containing any blanks to be filled in after the instructions are signed; or
- permit any person to make additions to, deletions from, or alterations of an escrow instruction unless it is signed or initialed by all signers of the original instructions.

Figure 13.2 summarizes legal requirements pertaining to the actions of escrow officers.

FIGURE 13.2: Legal Requirements for Escrow Officers

Officers Must	Officers May Not
<ul style="list-style-type: none"> ■ act according to issued written instructions. ■ act as a neutral party at all times. ■ hold monies deposited by parties until disbursed. ■ follow escrow instructions in every detail unless instructions are in violation of the law. ■ give to parties only that information that concerns them. ■ make sure that escrow does not close with an unverified check. 	<ul style="list-style-type: none"> ■ make a transaction for another officer. ■ negotiate with the parties separately. ■ suggest that terms or provisions be inserted in the escrow. ■ act as collection agencies to persuade a client to furnish funds. ■ notify parties that they have not ordered a certain document that may be necessary to close an escrow.

Escrow Procedures

Before closing, the escrow is a dual agent. After closing, the escrow has separate agency duties.

Escrow is a limited agency relationship governed by the content of the escrow instructions, and the escrow holder acts only on specific written instructions of the principals as agent for both parties. When the escrow is closed, the escrow holder becomes agent for each principal with respect to those things in escrow to which the respective parties have become completely entitled. Oral instructions should not be accepted or acted on.

Certain procedures must be followed to fulfill the legal requirements for escrow procedures. The broker needs to provide certain information to the escrow agent. Buyers and sellers must be aware of the responsibilities each must assume in the escrow procedure.

Escrow is a many-faceted procedure and includes but is not limited to the following:

- Order preliminary title report
- Conveying preliminary title report to buyer
- Ordering beneficiary statement or payout demands
- Handle receipt and disbursement of all funds
- Facilitate handling, preparation, and signing of all documents
- Comply with all government regulations
- Act as communicator with parties to the escrow, as well as broker and lender
- Ensure that all conditions of escrow are met
- Satisfy lender conditions and that a clear title will be conveyed to buyer
- Accept fire insurance policy
- Make all payments and fees
- Inform parties when escrow is ready to proceed
- Prepare closing statement

- Authorize the release and recording of all documents and disbursement of funds
- Secure title insurance policy

These duties are in addition to maintaining the highest level of trust and maintaining the confidentiality of the escrow.

Advantages of an Escrow

If you decide to buy a television set, you make your purchase from an appliance store. You pay for it by giving cash or adding it to your credit account. You likely would not give a second thought to whether the store has a right to sell the set to you. You probably give no thought at all to whether you need written evidence of your right to own the appliance. It is a simple sales transaction. With the sale of real property, the procedure is much more complicated. The seller could sign a simple deed of conveyance and deliver it to the buyer in exchange for the purchase price. However, neither the buyer nor the seller should agree to such an arrangement, for these reasons:

1. Title to the property may be encumbered. The buyer needs someone to make a title search for the purpose of issuing a title insurance policy.
2. An accurate description of the property is necessary for legal purposes.
3. The seller and the buyer need an experienced person to prepare the instrument of conveyance for their signatures.
4. The buyer and the seller need assurance that their instructions have been carried out and that the deeds will be delivered and any monies transferred only when all terms of the contract have been met.
5. There are distinct advantages to escrow and the use of a neutral third party in the transaction.
6. Escrow provides a custodian of papers, instructions, funds, and documents until the transaction is closed.
7. It makes possible the handling of accounting details in a professional manner.
8. It ensures the validity of a binding contract between participating parties.
9. It is of value to the buyers, assuring them that their monies will not be transferred until the title is conditioned to the specifications of their contract or agreement.
10. It is of value to the sellers, assuring them that the monies have been paid and all other terms and conditions have been met.

Escrow instructions. Escrow instructions are the written directions from the principals to the impartial third party, the escrow agent, to do all the necessary acts to carry out the escrow agreement of the principals. All principals in the escrow agreement (buyers, sellers, lenders, and borrowers) sign identical or conforming instructions that fully set out the understanding of the parties to the transactions. They deliver the signed instructions to the escrow agent.

Figure 10.6 in Unit 10 contains CAR Form RPA-CA, California Residential Purchase Agreement and Joint Escrow Instructions. The form provides that when the purchase offer is accepted, portions of the purchase agreement become the escrow instructions. The wide use of this form has significantly reduced the necessity of escrow instructions being prepared by the escrow holder or agent.

Communities vary in their escrow procedures. However, a title or escrow company would likely use preprinted forms for instructions, whereas a bank or other authorized agent may issue instructions by letter.

When both parties have signed the instructions, the parties are contractually bound to their agreement. If signed separate escrow instructions vary from the purchase agreement, the escrow instructions generally prevail because they most likely were the last agreement signed. In the absence of a purchase contract, the signed escrow instructions become the purchase contract.

Amendments to the escrow instructions must be signed by all parties to the escrow.

Amending the escrow instructions. Once both buyer and seller have signed the escrow instructions, the escrow is bound to carry out their agreement. If any changes are necessary, both buyer and seller must agree to **amend the escrow instructions**. Neither buyer nor seller can unilaterally modify the escrow agreement once it is signed.

Closing the escrow. When the escrow agent has fulfilled all instructions from buyer, seller, and lender; when the remainder of the purchase price has been produced; and when a deed has been signed, the escrow arrangements are complete. The basic steps in closing escrow are as follows:

1. A statement showing the condition of the indebtedness and the unpaid balance of the current loan is requested from the beneficiary, the lender. By law the beneficiary must respond within 21 days of receipt of the request.
2. When the escrow agent has received all funds, documents, and instructions necessary to close the escrow, the escrow agent makes any necessary adjustments and prorations on a settlement sheet.
3. All instruments pertinent to the transaction are then sent to the title insurance company for recording. At this point, time becomes important.
4. The title search runs right up to the last minute of the escrow recording to ensure that nothing has been inserted in the record. If no changes have occurred, the deed and other instruments are recorded on the following morning. Thus, a title policy can be issued with the assurance that no intervening matters of record against the real property have occurred since the last search.
5. On the day the deed is recorded, the escrow agent disburses funds to the parties, according to their signed instructions. These include the following:
 - Seller's lender—amount of loan(s) and cost(s) remaining at date of recording
 - Listing and selling brokers' sales commissions
 - Contractors—termite work, roof repairs, plumbing and/or electrical repairs, and so forth
 - Other liens against the property
6. After recording, the escrow agent presents closing statements to the parties who should receive them.

7. The title insurance company endeavors to issue a policy of title insurance on the day of recordation.
8. Shortly thereafter, the recorded deed is sent from the county recorder to the customer.

Failed escrow. If an escrow cannot be completed, the parties must agree to the release of funds (less costs and fees). If a party refuses to agree to the release of funds when there is not a good-faith dispute as to who is entitled to the funds, that party can be liable for treble damages but not less than \$100 or more than \$1,000 (CC1057.3(b)). A buyer's deposit may be released only if the parties agree. The matter is settled in arbitration or a judgment is rendered regarding the dispute.

Terms Used in Escrow Transactions

Recurring costs. Impound account costs for taxes and insurance are called **recurring costs**.

Impound account. When a real estate loan is made, monthly payments for taxes and fire insurance often are required. The lender estimates the funds needed for taxes and insurance, which vary from year to year. These funds are placed in a special reserve trust fund called an **impound account**. When the sale of the property is final and the loan is paid off, the seller is entitled to the unused portion of the impound account, as well as any interest earned.

Beneficiary statement. If an existing loan is to be paid or assumed by the buyer, the escrow agent will obtain a **beneficiary statement** showing the exact balance due from the one holding the deed of trust.

Demand statement. The **demand statement** indicates the amount due to the lender from escrow if the loan is to be paid off. It could include a prepayment penalty. (It is different from the beneficiary statement, which shows balance and condition of loan.)

Reconveyance. If the seller has a loan that is not being assumed by the buyer, the loan must be paid off to clear the title. The seller instructs the escrow agent to pay off the loan, for which the seller receives a **deed of reconveyance**. A *reconveyance fee* is charged the seller for this service. The sum due the lender is entered in the seller's escrow instructions as an estimate. The total figure will not be known until the final computations are made by the escrow officer at the time of closing.

Closing costs. The sum that the seller and the buyer have to pay beyond the purchase price is called the **closing costs**. Closing costs consist of fees charged for the mortgage loan, title insurance, escrow services, reconveyances, recording of documents, and transfer tax, among others. Amounts vary, depending on the particular locale involved and the price of the property. Figure 13.3 shows a sample of the customary seller's closing costs, but these costs vary regionally. Costs also vary, not only from area to area but also from institution to institution within an area. Some costs change with fluctuations in the economy. Figure 13.4 lists those items that are the buyer's responsibility.

As indicated in these lists, certain costs are customarily charged to the buyer and others to the seller. However, the two parties may agree to share some costs. Who pays closing costs is a negotiable item, unless required by a government-backed loan. Adapt this division of charges to your area. For actual fees, obtain copies of fee schedules from an escrow or title company in your area.

FIGURE 13.3: Closing Costs Customarily Paid by the Seller

Legal Closing

1. Owner's title policy
2. Escrow services (generally shared by buyer and seller)
3. Drawing deed
4. Obtaining reconveyance deed
5. Notary fees (typically, signing party pays to notarize)
6. Recording reconveyance
7. Documentary transfer tax (provided county and/or city has adopted this tax), \$0.55 for each \$500 or fractional part thereof (Check your local area for differences in rates and requirements for transfer taxes.)
8. Other agreed charges

Financial Closing

1. Mortgage discounts (points)
2. Appraisal charge for advance loan commitment
3. Structural pest control report or structural repair (if any needed). Typically, inspections are paid for by the buyer, and the structural pest report is provided by seller. Buyer and seller may negotiate who pays for inspection fees.
4. Interest on existing loan from last monthly payment to closing date
5. Beneficiary statement (balance on existing loan)
6. Loan payoff (first trust deed and/or any junior trust deed)
7. Prepayment penalty
8. Other agreed charges

Adjustments between Seller and Buyer (depend on closing or other date agreed on)

1. Pay any tax arrears in full
2. Pay any improvement assessment arrears (assessment may have to be paid in full)
3. Pay any other liens or judgments necessary to pass clear title
4. Pay broker's commission
5. Reimburse buyer for prepaid rents and deposits and adjust taxes, insurance, and interest as required
6. Occupancy adjustments

Source: *California Department of Real Estate Reference Book*, 1989–1990 Edition.

FIGURE 13.4: Closing Costs Customarily Paid by the Buyer**Legal Closing**

1. Standard or owners policy in some areas (usually a negotiable charge)
2. ALTA policy and inspection fee, if ordered
3. Escrow services (generally shared by buyer and seller)
4. Drawing second mortgage (if used)
5. Notary fee (typically, signing party pays to notarize)
6. Recording deed (person receiving deed pays to record)
7. Other agreed charges

Financial Closing

1. Loan origination fee
2. Appraisal fee
3. Credit report
4. Drawing up note(s) and trust deed(s)
5. Notary fees
6. Recording trust deed
7. Tax agency fee
8. Termite inspection fee (if Section 2)
9. Interest on new loan (from date of closing until first monthly payment due)
10. Assumption fee
11. Other agreed charges
12. New fire insurance premium one year prepaid, if applicable
13. For new FHA-insured loan, mortgage insurance premium

Adjustments between Seller and Buyer (depend on closing or other date agreed on)

1. Reimburse seller for prepaid taxes
2. Reimburse seller for prepaid insurance
3. Reimburse seller for prepaid improvement assessment
4. Reimburse seller for prepaid impounds (in case buyer is assuming an existing loan)
5. Other occupancy adjustments

Reserves (Impounds) Limitations by Real Estate Settlement Procedures Act (RESPA)—Variations

1. Any variation from custom in closing a transaction should be agreed on in advance. Some times through sheer bargaining power one party can demand relief from and be relieved of all or some of the customary charges and offsets generally assessed. The financial aspects of each transaction differ and should always be negotiated by the parties.
2. Accruals: Unless agreed on in advance, interest-bearing debts are accrued up to date of settlement and constitute a charge against the seller.

Source: *California Department of Real Estate Reference Book*, 1989–1990 Edition.

Prorations

The adjustment and distribution of costs to be shared by buyer and seller is called **proration**. Costs typically prorated include interest, taxes, insurance, and in the event that income property is involved, prepaid rents. Costs are prorated in escrow as of the closing of escrow or an agreed-upon date. Who is responsible for the day of closing may vary by local custom, although this can be changed by agreement. Generally, the buyer is responsible for the day of closing. Proration of taxes in California is generally based on a 30-day month and a 360-day year, known as

a *banker's year*. In some other states, proration is based on the actual number of days. Mortgage interest is charged on a true per diem basis and is not rounded to a 30-day month.

Property taxes. Property taxes are levied annually (July 1 to June 30 is the tax year) and are paid in two installments. Taxes often require proration. If, for example, the sellers had paid the first installment of a given year's taxes but completed the sale before that tax period was over, they would receive a credit for the remainder of that period's taxes. If, on the other hand, the sellers retained the property through part of the second tax period but had not yet paid taxes for that period, the amount due would be prorated between the sellers and the buyers, with the sellers having to pay for the portion of the tax period during which they still owned the property.

Insurance. Fire insurance is normally paid for one year in advance. If the buyer assumes a fire insurance policy that has not yet expired, the seller is entitled to a prorated refund of the unused premium. (Assumption may not be allowed since insurance is a personal contract.)

Interest. If a loan of record is being taken over by the buyer, interest will be prorated between buyer and seller. Because interest is normally paid in arrears, if a closing is set for the 15th of the month and the buyer assumes a loan with payments due on the 1st of the month, the seller owes the buyer for one-half-month's interest.

Rents. Prepaid rents will be prorated in cases involving income-producing properties. Rents are generally prorated on an actual day basis (calendar year) using 365 or 366 days.

Closing Disclosure

Procedure for closing disclosure. At a closing, separate statements are issued for the buyer and the seller. Each settlement sheet includes **debits** (amounts owed) and **credits** (amounts entitled to receive). In contrast to usual accounting procedures, on the seller's settlement sheet all the credits to the seller are added (selling price of the property, prorations, etc.). Any debits owed by the seller are then totaled and deducted from the credits. The difference is entered as a cash credit (usually) to the seller, and the escrow agent forwards a check for this amount at the close of escrow.

On the buyer's settlement sheet, the buyer is charged (debited) with the purchase price of the property. The loans the buyer has obtained are credited to the buyer. Cash is credited, prorations may be debited or credited (as the case warrants), and escrow fees and closing costs are debited. The difference between the total debits and credits usually is required in cash by the escrow agent. The cash payment into escrow becomes an additional credit and forces the account to balance. Because of the forced balances, the totals on the buyers' and sellers' statements will be different from each other and from the purchase price.

Dodd-Frank simplified closing disclosure requirements of the Truth in Lending Act and RESPA. The Closing Disclosure includes a detailed accounting of the mortgage transaction, including a breakdown of closing costs paid by the buyer, the seller and others. The new closing form replaces the HUD-1 Settlement Statement. The Closing Disclosure form must be in the hands of the borrower at least three business days before closing. A copy must also be provided to the seller no later than the day of closing.

A broker can act as an unlicensed escrow agent only if the broker is a principal or represents the buyer or the seller.

If information on the closing statement becomes inaccurate before closing, a corrected statement must be provided at least one business day before closing. Material changes requiring corrections include

- changes in the type of loan,
- a difference in the APR, and
- addition of a prepayment penalty.

Broker's Added Responsibility

Despite the care taken in escrow, mistakes can be made. The real estate broker's final duties are to meet with the buyers or the sellers and explain the closing statement, to help them understand all charges and credits on the statement, and to verify that they have received the correct amount from escrow or paid the correct amount into escrow.

IRS reporting. Cash payments of over \$10,000 must be reported to the IRS on IRS Form 8300. Gross proceeds to the seller are reported on IRS Form 1099S.

When Is Escrow Complete?

Escrow is complete when the following actions have been taken:

- The escrow officer sends the deed and deeds of trust to the recorder's office to be recorded. This offers protection of the title to the buyer and of the lien to the lender. The broker's responsibility is to confirm the recordation and inform the clients.
- The escrow agent sends to the seller and the buyer the closing statements showing the disbursement of funds.
- The escrow agent forwards the title policy, assuring the buyer of marketable title, except for certain items; the agent sends the original copy to the buyer.

FIGURE 13.5: Closing Disclosure**Closing Disclosure**

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information		Transaction Information	Loan Information
Date Issued	4/15/2013	Borrower Michael Jones and Mary Stone	Loan Term 30 years
Closing Date	4/15/2013	123 Anywhere Street	Purpose Purchase
Disbursement Date	4/15/2013	Anytown, ST 12345	Product Fixed Rate
Settlement Agent	Epsilon Title Co.	Seller Steve Cole and Amy Doe	Loan Type <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA
File #	12-3456	321 Somewhere Drive	<input type="checkbox"/> VA <input type="checkbox"/> _____
Property	456 Somewhere Ave	Anytown, ST 12345	Loan ID # 123456789
Sale Price	\$180,000	Lender Ficus Bank	MIC # 000654321

Loan Terms		Can this amount increase after closing?
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$761.78	NO
Does the loan have these features?		
Prepayment Penalty	YES	• As high as \$3,240 if you pay off the loan during the first 2 years
Balloon Payment	NO	

Projected Payments		
Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow <i>Amount can increase over time</i>	+ 206.13	+ 206.13
Estimated Total Monthly Payment	\$1,050.26	\$967.91
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time See page 4 for details</i>	\$356.13 a month	This estimate includes <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association Dues <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>
		In escrow? YES YES NO

Costs at Closing	
Closing Costs	\$9,712.10 Includes \$4,694.05 in Loan Costs + \$5,018.05 in Other Costs – \$0 in Lender Credits. <i>See page 2 for details.</i>
Cash to Close	\$14,147.26 Includes Closing Costs. <i>See Calculating Cash to Close on page 3 for details.</i>

FIGURE 13.5: Closing Disclosure (continued)

Closing Cost Details

Loan Costs		Borrower-Paid		Seller-Paid		Paid by Others
		At Closing	Before Closing	At Closing	Before Closing	
A. Origination Charges		\$1,802.00				
01	0.25 % of Loan Amount (Points)	\$405.00				
02	Application Fee	\$300.00				
03	Underwriting Fee	\$1,097.00				
04						
05						
06						
07						
08						
B. Services Borrower Did Not Shop For		\$236.55				
01	Appraisal Fee to John Smith Appraisers Inc.					\$405.00
02	Credit Report Fee to Information Inc.		\$29.80			
03	Flood Determination Fee to Info Co.	\$20.00				
04	Flood Monitoring Fee to Info Co.	\$31.75				
05	Tax Monitoring Fee to Info Co.	\$75.00				
06	Tax Status Research Fee to Info Co.	\$80.00				
07						
08						
09						
10						
C. Services Borrower Did Shop For		\$2,655.50				
01	Pest Inspection Fee to Pests Co.	\$120.50				
02	Survey Fee to Surveys Co.	\$85.00				
03	Title – Insurance Binder to Epsilon Title Co.	\$650.00				
04	Title – Lender's Title Insurance to Epsilon Title Co.	\$500.00				
05	Title – Settlement Agent Fee to Epsilon Title Co.	\$500.00				
06	Title – Title Search to Epsilon Title Co.	\$800.00				
07						
08						
D. TOTAL LOAN COSTS (Borrower-Paid)		\$4,694.05				
Loan Costs Subtotals (A + B + C)		\$4,664.25	\$29.80			
Other Costs						
E. Taxes and Other Government Fees		\$85.00				
01	Recording Fees Deed: \$40.00 Mortgage: \$45.00	\$85.00				
02	Transfer Tax to Any State			\$950.00		
F. Prepays		\$2,120.80				
01	Homeowner's Insurance Premium (12 mo.) to Insurance Co.	\$1,209.96				
02	Mortgage Insurance Premium (mo.)					
03	Prepaid Interest (\$17.44 per day from 4/15/13 to 5/1/13)	\$279.04				
04	Property Taxes (6 mo.) to Any County USA	\$631.80				
05						
G. Initial Escrow Payment at Closing		\$412.25				
01	Homeowner's Insurance \$100.83 per month for 2 mo.	\$201.66				
02	Mortgage Insurance per month for mo.					
03	Property Taxes \$105.30 per month for 2 mo.	\$210.60				
04						
05						
06						
07						
08	Aggregate Adjustment	– 0.01				
H. Other		\$2,400.00				
01	HOA Capital Contribution to HOA Acre Inc.	\$500.00				
02	HOA Processing Fee to HOA Acre Inc.	\$150.00				
03	Home Inspection Fee to Engineers Inc.	\$750.00			\$750.00	
04	Home Warranty Fee to XYZ Warranty Inc.			\$450.00		
05	Real Estate Commission to Alpha Real Estate Broker			\$5,700.00		
06	Real Estate Commission to Omega Real Estate Broker			\$5,700.00		
07	Title – Owner's Title Insurance (optional) to Epsilon Title Co.	\$1,000.00				
08						
I. TOTAL OTHER COSTS (Borrower-Paid)		\$5,018.05				
Other Costs Subtotals (E + F + G + H)		\$5,018.05				
J. TOTAL CLOSING COSTS (Borrower-Paid)		\$9,712.10				
Closing Costs Subtotals (D + I)		\$9,682.30	\$29.80	\$12,800.00	\$750.00	\$405.00
Lender Credits						

CLOSING DISCLOSURE

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FIGURE 13.5: Closing Disclosure (continued)

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.	
	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	\$8,054.00	\$9,712.10	YES • See Total Loan Costs (D) and Total Other Costs (I)
Closing Costs Paid Before Closing	\$0	– \$29.80	YES • You paid these Closing Costs before closing
Closing Costs Financed (Paid from your Loan Amount)	\$0	\$0	NO
Down Payment/Funds from Borrower	\$18,000.00	\$18,000.00	NO
Deposit	– \$10,000.00	– \$10,000.00	NO
Funds for Borrower	\$0	\$0	NO
Seller Credits	\$0	– \$2,500.00	YES • See Seller Credits in Section L
Adjustments and Other Credits	\$0	– \$1,035.04	YES • See details in Sections K and L
Cash to Close	\$16,054.00	\$14,147.26	

Summaries of Transactions		Use this table to see a summary of your transaction.	
BORROWER'S TRANSACTION		SELLER'S TRANSACTION	
K. Due from Borrower at Closing \$189,762.30		M. Due to Seller at Closing \$180,080.00	
01	Sale Price of Property \$180,000.00	01	Sale Price of Property \$180,000.00
02	Sale Price of Any Personal Property Included in Sale	02	Sale Price of Any Personal Property Included in Sale
03	Closing Costs Paid at Closing (J) \$9,682.30	03	
04		04	
Adjustments		05	
05		06	
06		07	
07		08	
Adjustments for Items Paid by Seller in Advance		Adjustments for Items Paid by Seller in Advance	
08	City/Town Taxes to	09	City/Town Taxes to
09	County Taxes to	10	County Taxes to
10	Assessments to	11	Assessments to
11	HOA Dues 4/15/13 to 4/30/13 \$80.00	12	HOA Dues 4/15/13 to 4/30/13 \$80.00
12		13	
13		14	
14		15	
15		16	
L. Paid Already by or on Behalf of Borrower at Closing \$175,615.04		N. Due from Seller at Closing \$115,665.04	
01	Deposit \$10,000.00	01	Excess Deposit
02	Loan Amount \$162,000.00	02	Closing Costs Paid at Closing (J) \$12,800.00
03	Existing Loan(s) Assumed or Taken Subject to	03	Existing Loan(s) Assumed or Taken Subject to
04		04	Payoff of First Mortgage Loan \$100,000.00
05	Seller Credit \$2,500.00	05	Payoff of Second Mortgage Loan
Other Credits		06	
06	Rebate from Epsilon Title Co. \$750.00	07	
07		08	Seller Credit \$2,500.00
Adjustments		09	
08		10	
09		11	
10		12	
11		13	
Adjustments for Items Unpaid by Seller		Adjustments for Items Unpaid by Seller	
12	City/Town Taxes 1/1/13 to 4/14/13 \$365.04	14	City/Town Taxes 1/1/13 to 4/14/13 \$365.04
13	County Taxes to	15	County Taxes to
14	Assessments to	16	Assessments to
15		17	
16		18	
17		19	
CALCULATION		CALCULATION	
Total Due from Borrower at Closing (K) \$189,762.30		Total Due to Seller at Closing (M) \$180,080.00	
Total Paid Already by or on Behalf of Borrower at Closing (L) – \$175,615.04		Total Due from Seller at Closing (N) – \$115,665.04	
Cash to Close <input checked="" type="checkbox"/> From <input type="checkbox"/> To Borrower \$14,147.26		Cash <input type="checkbox"/> From <input checked="" type="checkbox"/> To Seller \$64,414.96	

CLOSING DISCLOSURE

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FIGURE 13.5: Closing Disclosure (continued)**Additional Information About This Loan****Loan Disclosures****Assumption**

If you sell or transfer this property to another person, your lender

- ☐ will allow, under certain conditions, this person to assume this loan on the original terms.
- ☒ will not allow assumption of this loan on the original terms.

Demand Feature

Your loan

- ☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
- ☒ does not have a demand feature.

Late Payment

If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)

Under your loan terms, you

- ☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☒ do not have a negative amortization feature.

Partial Payments

Your lender

- ☒ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- ☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
- ☐ does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

Security Interest

You are granting a security interest in

456 Somewhere Ave., Anytown, ST 12345

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account

For now, your loan

- ☒ will have an escrow account (also called an “impound” or “trust” account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	\$2,473.56	Estimated total amount over year 1 for your escrowed property costs: <i>Homeowner's Insurance</i> <i>Property Taxes</i>
Non-Escrowed Property Costs over Year 1	\$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: <i>Homeowner's Association Dues</i> You may have other property costs.
Initial Escrow Payment	\$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment	\$206.13	The amount included in your total monthly payment.

- ☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

FIGURE 13.5: Closing Disclosure (continued)

Loan Calculations	
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	\$285,803.36
Finance Charge. The dollar amount the loan will cost you.	\$118,830.27
Amount Financed. The loan amount available after paying your upfront finance charge.	\$162,000.00
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.174%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing

Other Disclosures	
Appraisal If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.	
Contract Details See your note and security instrument for information about <ul style="list-style-type: none"> • what happens if you fail to make your payments, • what is a default on the loan, • situations in which your lender can require early repayment of the loan, and • the rules for making payments before they are due. 	
Liability after Foreclosure If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan, <input checked="" type="checkbox"/> state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information. <input type="checkbox"/> state law does not protect you from liability for the unpaid balance.	
Refinance Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.	
Tax Deductions If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.	

Contact Information					
	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
Address	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
NMLS ID					
ST License ID			Z765416	Z61456	Z61616
Contact	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
Contact NMLS ID	12345				
Contact ST License ID			P16415	P51461	PT1234
Email	joesmith@ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@epsilontitle.com
Phone	123-456-7890		123-555-1717	321-555-7171	987-555-4321

Confirm Receipt	
By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.	
Applicant Signature	Date
Co-Applicant Signature	Date
CLOSING DISCLOSURE	PAGE 5 OF 5 • LOAN ID # 123456789

Liability of an Escrow

Escrow could be held liable for its negligence or breach of duty. However, escrow companies do not have any duty to warn a party of possible fraud or point out any detrimental fact or risk of a transaction. If, however, the escrow was a broker, the broker would have these disclosure obligations.

TITLE INSURANCE

Title insurance insures the ownership of real property (land, buildings, and minerals below the surface) against any unknown encumbrances and other items that may cloud the title. These are primarily claims that might be made by a third party against the property. Buyers are assured that a thorough search has been made of all public records affecting the property being purchased and that the buyers have a marketable title.

Title insurance is paid for once, at the time title passes from one owner to another, and it remains in effect until the property is sold again, at which time title passes to the new owner. If a property owner dies, title insurance continues to protect the owner's heirs.

If a buyer does not elect to buy title insurance protection, that buyer is not protected, even though a prior owner had title insurance.

Both the lender and the buyer should benefit from and have title insurance—the buyer to ensure clear title, and thus protect her investment, and the lender to protect his interest in the property.

It is now possible to obtain title insurance at significant savings online. Entitle Direct, www.entitledirect.com, is one such company. It is rated “A Prime” by Demotech, Inc., which rates insurer financial stability.

The two basic types of policies are the California Land Title Association (CLTA) policy and the American Land Title Association (ALTA) policy. In 1987, the title insurance industry issued a new set of policies with new coverages and exclusions.

Standard Policy

The policy usually used by the buyer in California is the **CLTA policy**. This policy is called a **standard policy**. The standard policy of title insurance covers matters of record, if not specifically excluded from coverage, as well as specified risks not of record, such as the following:

- Forgery
- Lack of capacity of a grantor
- Undisclosed spousal interests (a grantor who claimed to be single had a spouse with community property interests)
- Failure of delivery of a prior deed
- Federal estate tax liens

- Deeds of a corporation whose charter has expired
- Deeds of an agent whose capacity has terminated

Excluded from coverage by a standard policy of title insurance are the following:

- Defects known by the insured and not disclosed to the title insurer
- Zoning (although a special endorsement is possible that a current use is authorized by current zoning)
- Mining claims (filed in mining districts; legal descriptions are not required)
- Taxes and assessments that are not yet liens
- Easements and liens not a matter of record (such as prescriptive easements and rights to a mechanic's lien)
- Rights of parties in possession (unrecorded deeds, leases, options, etc.)
- Matters not a matter of record that would be disclosed by checking the property (such as encroachment)
- Matters that would be revealed by a correct survey
- Water rights
- Reservations in government patents

A title insurance policy may include an exception to a particular problem so that the policy will not cover a loss resulting from that problem.

A standard CLTA policy protects the buyer as to matters of record and specified risks.

Generally, in southern California the seller pays for the standard policy of title insurance. In some northern California communities, the buyer pays for this coverage. Any agreement of the parties as to who pays takes precedence over local custom.

ALTA Policy

An **ALTA extended policy** is generally purchased for the benefit of the lender. The buyer pays for this lender protection. It ensures that the lender has a valid and enforceable lien, subject to only the exclusions from coverage noted in the exception schedule of the policy. It insures the lender for the amount of the loan, not the purchase price of the property. There are three basic ALTA policies—one deals with homes described by lot, block, and tract; one deals with homes described by either the metes-and-bounds or government survey system; and one deals with construction loans.

While ALTA covers the United States, CLTA only covers California. An ALTA lender policy provides extended coverage to the lender, not the buyer.

The extended coverage lender policy protects the lender only, not the purchaser, from the risks covered. Buyers who desire extended protection must pay for that protection. An owner's policy that offers this extended protection is available. (Both CLTA and ALTA have homeowner extended coverage policies.)

In addition to the coverage offered by the standard policy, the extended coverage policy of title insurance includes the following:

- Unrecorded liens
- Off-record easements
- Rights of parties in physical possession, including tenants and buyers under unrecorded instruments
- Rights and claims that a correct survey or physical inspection would disclose
- Mining claims
- Water rights
- Lack of access

Insurers might require a survey before they issue an extended coverage policy of title insurance. The extended coverage policy does not cover the following:

- Matters known by the insured but not conveyed to the insurer
- Government regulations, such as zoning
- Liens placed by the insured
- Eminent domain
- Violations of the map act

The coverage of standard and extended coverage policies can be seen in Figure 13.6.

There are also special construction loan title insurance policies, policies that guarantee trustee sales, bankruptcy guarantees, boundary line agreement guarantees, and special policies for unimproved land. California Title Company publishes a summary of California endorsement to title policies. Information on the endorsements offered can be obtained from California Title Company at www.caltitle.com.

WEB LINK

FIGURE 13.6: Owner's Title Insurance Policy

Standard Coverage

1. Defects found in public records
2. Forged documents
3. Incompetent grantors
4. Incorrect marital statements
5. Improperly delivered deeds

Extended Coverage

1. Standard Coverage plus defects discoverable through:
2. Property inspection, including unrecorded rights of persons in possession
3. Examination of survey
4. Unrecorded liens not known of by policyholder

Not Covered by Either Policy

1. Defects and liens listed in policy
2. Defects known to buyer
3. Changes in land use brought about by zoning ordinances

The premiums paid reflect the work that goes into the issuance of a title policy, not the amount paid in claims. Typically, less than 5% of premium dollars is paid out by a title insurer in claims.

Preliminary Title Report

The preliminary title report does not provide any insurance.

Before a policy of title insurance is issued, the issuer issues a **preliminary title report**. This report is designed to provide an interim response to an application for title insurance. It is also intended to facilitate the issuance of a particular type of policy. The preliminary report identifies the title to the estate or interest in the prescribed land. It also contains a list of the defects, liens, encumbrances, and restrictions that would be excluded from coverage if the requested policy were to be issued as of the date of the report.

Licensees often will obtain a copy of the preliminary report in order to discuss the matters set forth in it with their clients. Thus, a preliminary report provides the opportunity to seek the removal of items referenced in the report that are unacceptable to the prospective insured. Such arrangements can be made with the assistance of the escrow office.

Preliminary reports are one of the steps in the risk elimination process. Risk elimination includes the maintenance and collection of title records (known as the **title plant**), the searching and examination of the records, and the underwriting standards of each title insurance company.

The preliminary report does not necessarily show the condition of the title; it merely reports the current vesting of title and the items the title company will exclude from coverage if the policy should be issued later. The elements of this definition are threefold:

1. A preliminary report is an offer.
2. It is *not* an abstract of title reporting a complete chain of title.
3. It is a statement of the terms and conditions of the offer to issue a title policy.

The title insurer customarily makes a last-minute check to ensure there are no new recordings concerning a property's title before issuing its policy of insurance.

Policy Interpretation

Title insurance policies are interpreted in accordance with the reasonable expectations of the insured. In the event of ambiguities, they normally would be resolved against the insurer.

Rebate Law (RESPA)

Title insurance companies are precluded by law from providing kickbacks to brokers for referral of business. They must charge brokers the same as other customers and make a sincere effort to collect any premiums due. The **rebate law** extends to escrows, as well as to title insurers. Besides being grounds for disciplinary action, receiving a rebate from a title insurer is considered commercial bribery and could subject a licensee to up to one year in jail and a \$10,000 fine for each transaction.

SUMMARY

An escrow is a third-party stakeholder who receives and disburses documents and funds in a real property transaction. The escrow is usually selected by the buyer and the seller in the purchase agreement. The escrow cannot be completed until all conditions are met. The escrow basically has agency duties to both buyer and seller. There may be duties to a lender as well. The broker is not a party to the escrow, and the escrow agent has no duty to obey instructions of the broker after the escrow instructions have been signed.

Escrows must be corporations and licensed as escrow. An exception is that a broker can act as an escrow without a license if the broker was a principal to the transaction or represented either the buyer or the seller. Aside from the broker, the lender, and attorney exemptions, an escrow must be a corporation and must meet strict licensing requirements.

An escrow is opened with the parties signing escrow instructions. A valid escrow consists of a signed agreement and conditional delivery of transfer documents to the escrow. The delivery is conditioned on the buyer's fully meeting obligations. Once escrow instructions have been signed by both buyer and seller, any change to the instructions requires the signatures of both buyer and seller.

When the escrow disburses funds and records the deed, the escrow is considered closed. A Closing Disclosure is issued by the escrow showing the debits and the credits of the transaction. Rents, taxes, interest, and insurance are likely to be prorated by the escrow. Proration is based on a 30-day month and a 360-day year. After escrow closes, the broker should make certain the client fully understands the disclosure statement.

Escrow companies are liable for their negligence, but they are not liable for failure to warn a party of possible fraud or to point out a detrimental fact or risk of a transaction.

An abstract shows only the recorded history of a property. A title opinion based on an abstract does not reveal defects such as forgery, lack of capacity, unknown spousal interests, and so forth. These and other risks are covered by a standard policy of title insurance, which also covers risks of record. Greater coverage for lenders can be obtained with an ALTA extended coverage policy. If buyers want this protection for themselves, they have to buy an extended coverage owners policy.

The preliminary title report is an offer to insure and does not give the buyer any protection unless a policy of title insurance is purchased. There are special title insurance policies for specific needs.

The rebate law prohibits title insurance carriers and escrows from rebating fees for referrals or otherwise providing special advantages or deals to brokers.

CLASS DISCUSSION TOPICS

1. Which offices and developments in your area handle their own escrows? Why?
2. In your area, are escrow instructions separate for buyer and seller or are the instructions a single agreement?
3. What are typical escrow costs for the sale of a \$600,000 residence in your area?
4. What does it cost for a standard policy of title insurance for a \$600,000 home in your area?
5. What does it cost for a \$600,000 extended coverage policy of title insurance for lender protection?
6. How does a preliminary title report differ from a property profile provided by a title insurer?
7. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. A broker can act as an escrow when the broker
 - a. represents the buyer in the transaction.
 - b. represents the seller in the transaction.
 - c. is a principal in the transaction.
 - d. is any of these.
2. An escrow company is prohibited from
 - a. paying referral fees to anyone other than an employee of the escrow company.
 - b. bonding employees.
 - c. both of these.
 - d. neither of these.
3. To determine the balance due on a loan, escrow requests
 - a. a closing statement.
 - b. a beneficiary statement.
 - c. a reconveyance.
 - d. an impound statement.
4. Which is a debit to the seller on a seller's closing statement?
 - a. Selling price
 - b. Prepaid taxes
 - c. First trust deed to be assumed by buyer
 - d. All of these
5. Which is a credit to the buyer on the buyer's closing statement?
 - a. Purchase price
 - b. Escrow costs
 - c. Title insurance
 - d. First trust deed assumed
6. An escrow company has a legal duty to
 - a. warn parties if the escrow knows of possible fraud.
 - b. suggest changes when one party is not being adequately protected.
 - c. do both of these.
 - d. do neither of these.
7. A standard policy of title insurance is used to show
 - a. that there are no encumbrances against a property.
 - b. that the seller has a marketable title.
 - c. both of these.
 - d. neither of these.

8. Which of the following is covered by the CLTA standard policy of title insurance?
 - a. Easements not a matter of public record
 - b. Rights of a party in possession
 - c. Unknown spousal interests
 - d. Encroachment
9. Which is *NOT* covered by an ALTA extended coverage policy of title insurance?
 - a. Mining claims
 - b. Liens placed by the insured
 - c. Water rights
 - d. Off-record easement
10. Title insurance companies may
 - a. give rebates to brokers for referrals.
 - b. give brokers preferential rates on their own purchases.
 - c. charge brokers the same as others but make no effort to collect.
 - d. do none of these.

14

UNIT FOURTEEN



TAXATION

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- explain why taxes play an important role in real estate ownership and investment;
- describe statutory exemptions on property taxation; and
- understand tax shelters, probate, and living trusts.

KEY TERMS

acquisition indebtedness	home improvements	realized gain
adjusted basis	homeowner's exemption	recognized gain
ad valorem taxes	installment sale	reverse exchange
basis	investment property rule	sale-leaseback
boot	like-kind rule	special assessments
capital gain	living trust	stepped-up basis
capital loss	no-choice rule	supplemental tax bill
deferred gain	no-loss rule	tax-deferred exchange
depreciable basis	original basis	1031 exchange
depreciation	primary personal	Urban Agriculture
entity rule	residence	Incentive Zone Act
equity indebtedness	probate	veteran's exemption
estate tax	Proposition 13	Williamson Act
excluded gain	Proposition 58	
Foreign Investment in	Proposition 60	
Real Property Tax Act	Proposition 90	

REAL PROPERTY TAXES

Real property taxes are based on value.

Real property taxes are **ad valorem taxes**. *Ad valorem* is a Latin expression that means “according to value.” Real estate tax rates are a percentage of the property’s “full cash value.” The concept is not new; throughout history, people’s wealth has been determined largely by the amount of real property they own. Landowners almost always have been taxed on the basis of their property holdings. Governments favor real estate taxation because it is the one form of taxation that cannot be evaded. If a taxpayer fails to pay taxes, the levying body can foreclose on its tax lien to satisfy the taxpayer’s obligations. In the United States, property taxes are deductible on a homeowner’s income tax return. However, a \$10,000 limit on the deduction applies to a combination of state income tax and property taxes. Special assessments for improvements generally are not considered a tax-deductible expense. They do, however, increase the cost basis.

The levying of real property taxes profoundly affects the real estate market. If taxes are high, potential customers may hesitate to involve themselves with such an expense by purchasing property. On the positive side, revenues from property taxes are a vital source of government income on the local level, enabling local government to provide for the health, education, safety, and welfare of the citizenry.

Real Property Tax Calendar

Taxes are assessed and paid based on a fiscal year (July 1 through June 30). Taxes may be paid in two equal installments. The acronym *NDFA* (No Darn Fooling Around) is a memory tool for understanding the dates of these two payments:

N – November 1, first installment due

D – December 10, first installment becomes delinquent

F – February 1, second installment due

A – April 10, second installment becomes delinquent

Billing

If taxes are to be paid through a lending agency, the county sends a tax bill to that agency and a copy of it to the owner. The owner’s copy states that it is for information only. If the owner is to pay the taxes, the original bill is sent directly to the owner for payment. The tax bill includes any special assessments. Unpaid taxes become delinquent, and a penalty is charged even if the taxpayer never received a notice of taxes due. It is the taxpayer’s responsibility to make sure that tax payment deadlines are met.

Figure 14.1 shows a sample tax bill.

FIGURE 14.1: Sample Tax Bill

Matthew Jennings
Riverside County Treasurer-Tax Collector

PO BOX 12005 Riverside, CA 92502-2205
4080 Lemon St (1st Floor) Riverside, CA 92501

Telephone: (951) 955-3500
Toll Free Number: 1 (877) 748-2689
From area codes 951 & 760 only

October 13, 2021

Property Data: 752250035 LOT 41 MB 275/097 TR 28926

Address: 12345 ADAMS STREET PALM SPRINGS CA 92262

Mailed to: DOE, JOHN Q % MARY S
12345 ADAMS STREET
PALM SPRINGS, CA 92262-2211

RIVERSIDE COUNTY ANNUAL SECURED PROPERTY TAX BILL
For Fiscal Year July 1, 2021 through June 30, 2022

Go paperless with our new E-Billing feature! Just visit our website, click the E-Billing link and use the following E-Billing Enrollment Code to receive future tax bills on this assessment number via email. Your Enrollment Code is 12440881.

Visit our website: www.countytreasurer.org

28185

SCAN QR CODE TO PAY ONLINE

IMPORTANT INFORMATION ON REVERSE SIDE

PIN	Bill Number	Assessment Number	Bill Posted Date	Tax Rate Area
752250035	2021005106853	2021-752250035	09-14-2021	075-004

Owner(s) January 1st, 2021 "Et al" means other owners are present on this parcel
PIVAR WILLIAM H, PIVAR CORINNE E

CHARGES LEVIED BY TAXING AGENCIES	FOR INFORMATION CALL	AMOUNT
General		\$4,398.38
03-2001-D DESERT SANDS UNIFIED SCHOOL	760-771-8516	\$329.88
03-9001-D DESERT COMMUNITY COLLEGE	760-773-2513	\$173.74
04-4821-D CV WATER DISTRICT STATE WTR PROJ	760-398-2661 Ext:2257	\$483.82
*** TOTAL AD VALOREM TAXES		\$5,385.82
68-4556-FC COACHELLA VALLEY MOSQUITO & RIFA	866-807-6864	\$14.38
68-4612-FC DESERT REC DIST AD 93-1	866-807-6864	\$9.90
68-4837-FC CVWD SEWER SERVICE CHARGE 1081	760-391-9600	\$295.44
*** TOTAL SPECIAL ASSESSMENTS AND FIXED CHARGES		\$319.72

Land	\$153,118
Structures	\$293,721
Full Taxable Value	\$446,839
Exemptions - Homeowner	\$7,000
Exemptions - Other	\$0
Net Taxable Value	\$439,839
Tax Rate Per \$100 Value	1.2245
Taxes	\$5,385.82
Special Assessments & Fixed Charges	\$319.72
Total Base Tax Amount	\$5,705.54
Add 10% penalty after 12-10-2021	\$2,852.77
Add 10% penalty plus cost after 04-11-2022	\$2,852.77
DUE	\$2,852.77

PLEASE KEEP TOP PORTION FOR YOUR RECORDS
NO RECEIPTS WILL BE ISSUED - YOUR CANCELLED CHECK IS YOUR RECEIPT

Typical California Tax Bill

A typical California tax bill includes the following information:

- An identifying parcel number, with reference to the map page and property number or other description
- A breakdown between land assessments and improvement assessments
- Tax exemptions such as homeowner's exemption
- A breakdown of the bonded indebtedness or special assessments
- The full amount of the tax
- Itemized or perhaps separate payment cards with the full tax equally divided into first and second installments

The supplemental tax bill covers the difference between the seller's assessed valuation and the new valuation based on the sales price.

Supplemental tax bill. A recent homebuyer may come into an agent's office and say, "I paid my property tax, and a month later I received a new assessment for almost the same amount. How much are my taxes on this property?" Before the property is purchased, the agent should explain to buyers that in the first year of ownership, they will receive two or three tax bills: the regular tax bill and one or two **supplemental tax bills**. Supplemental tax bills are issued because property is reassessed as of the sale date. A change of ownership statement must be filed in the county assessor's office within 45 days of the transfer. The sale will generally trigger a reassessment.

Property taxes are billed and paid for the fiscal year of July 1 through June 30. When a buyer purchases a new home, it takes time to notify the tax collector's office of the sale of property and for the tax collector's office to issue the new property tax bill based on the new assessed value. The county assessor is directed to put new values on a supplemental assessment roll from the completion date of construction or the change of ownership date (for example, a sale). If the new value is higher than the current assessed value, a supplemental tax bill is sent to the property owner that reflects the higher valuation for the remainder of the tax year.

EXAMPLE Mr. and Mrs. Newly Boute purchased a home on January 2 of this year for \$300,000. Assume no bond issues or assessment other than the basic levy of 1%. The new property tax will be \$3,000 (1% of \$300,000). The old assessment on the home was \$100,000. Therefore, the property tax on the home was \$1,000 for the fiscal year from July 1 of last year to June 30 of this year. So, when the Boutes purchased their home, their tax bill for the second installment of the fiscal year would be \$500 (half of \$1,000) due February and delinquent April 10, which is the old bill. The Boutes should be paying \$1,500 on the new tax bill (half of \$3,000). Because they paid \$500 on the old bill, they will have to pay a supplemental tax bill of \$1,000 (\$1,500 – \$500). See the following chart.

FISCAL YEAR		
	July 1 Last Year	
	Jan. 1	This Year June 30
Old	\$500	\$500
Assessed Value		
$\$100,000 \times 0.01 = \$1,000$		
Property Tax		
New		
Assessed value		
$\$300,000 \times 0.01 \times 0.5 = \$3,000$		
(\$1,500 for 6 months)		
Property tax (for only half a year)		\$1,500
Since they paid \$500		
Supplemental bill will be for \$1,000		\$1,000
Total paid for year		\$1,500

Special Assessments

Cities, counties, and special districts may, by a two-thirds vote of the electors of the district, impose special taxes on such districts. These **special assessments** are levied for specified local improvements, such as streets, sewers, irrigation, drainage, flood control, and special lighting. This voter-approved bonded indebtedness varies from county to county and within each county.

Proposition 13

Proposition 13 was enacted in 1978. It states that newly acquired real estate or new construction will be assessed according to the fair market value (FMV) and taxed at a maximum tax rate of 1% (called the *basic levy*). In addition, the assessed values of properties acquired before 1978 will be reduced to the amount shown on the 1975 tax roll. Because different areas of a county have different bond issues or special assessments for that particular area, additional monies up to 1% are added to the basic levy (Proposition 13), causing the tax rate for these areas to range from 1% to more than 2%, depending on the area.

EXAMPLE Your client, Mr. Bior, purchased a home this year for \$300,000. Because of Proposition 13, the property taxes will be \$3,000 ($\$300,000 \times 0.01$). Mr. Bior's area could have an additional assessment of 0.5%. Therefore, for his particular area, his property taxes could be \$4,500 ($\$300,000 \times 0.015$).

Proposition 13 limits annual increases in assessed valuation to 2 percent.

One additional aspect of Proposition 13 is that the assessment value may be increased by up to 2% each year, as long as the Consumer Price Index (CPI) is not exceeded. The CPI measures inflation. This 2% increase in the assessed value represents the maximum amount the county assessor may increase the property's value each fiscal year.

EXAMPLE Mr. Bior purchased a home for \$300,000 and paid \$4,500 ($\$300,000 \times 0.015$) in property taxes the first year. For the second year, the assessed value of the property will be \$306,000 ($\$300,000 \times 1.02$). Presumably, the tax rate of 1.5% remains the same. Thus, Mr. Bior's property tax bill will be \$4,590 ($\$306,000 \times 0.015$) for the second year. The property tax bill can be calculated in the same manner for each subsequent year of ownership.

One of the objectives of Proposition 13 is to keep property taxes as low as possible. According to Proposition 13, certain transfers of title (such as a sale) will cause a reassessment of the property, which will increase the property taxes. Transfers changing the form of ownership (changing from joint tenancy to community property), creation of revocable living trusts, and cosigners for loan qualification and transfers of a principal residence from parent to child or child to parent are exempt from reassessment.

Proposition 58 allows transfers without reassessment to a spouse or children.

Proposition 58

Proposition 58 provides that transfers of real property between spouses or domestic partners and transfers of the principal residence and the first \$1,000,000 of other real property between parent and child are exempt from reassessment. The code defines a *child* as a natural child (any child born of the parents), any stepchild or spouse of that stepchild when the relationship of stepparent and stepchild exists, a son-in-law or daughter-in-law of the parent(s), or a child who was adopted by the age of 18. (Note that Proposition 193 subsequently extended the exemption from reassessment to persons who inherit property from a grandparent when both parents of the grandchild are deceased. The grandchild can therefore keep the grandparent's assessment for property taxes.)

To receive this exclusion, a claim must be filed with the county assessor. The claim must contain a written certification by the transferee made under penalty of perjury that the transferee is a parent or child of the transferor. This statement must also state whether the property is the transferor's principal residence. If the property is not the transferor's principal residence and the full cash value of the real property transferred (the taxable value on the roll just prior to the date of transfer) exceeds the allowable exclusion (\$1,000,000), the eligible transferee must specify the amount and allocation of the exclusion on the claim. The \$1,000,000 exemption can be doubled by both parents combining their \$1,000,000 exemptions to transfer \$2,000,000 in property to a child without an increase in tax assessment. To be eligible, the transferee child must make the property their principal residence.

Proposition 19

Proposition 19 limits prior propositions in that transfers to children and grandchildren require they use the property as a residence. There is also a limitation on value transferred; assessed value plus \$1,000,000.

For property other than a residence, Proposition 19 removes the tax exemption.

In general, Proposition 19 will encourage homeowners to move and should have a positive effect on the real estate marketplace.

Proposition 60

Proposition 60 allows homeowners over 55 years of age to transfer their assessed valuation to a new residence in the same county.

The purpose of **Proposition 60** was to encourage older people to move to less-expensive housing without having to pay higher taxes because of reassessment on a new home. Proposition 60 provides that qualified homeowners aged 55 or over, as well as taxpayers who are severely and permanently disabled, may transfer the current base-year value of their present principal residence to a replacement (that is, sell their old home and buy a new home), with the following conditions:

- Both properties must be in the same county.
- The transferor must be at least 55 years old as of the date of transfer (sale). (If married, only one spouse needs to be at least 55 but must reside in the residence; if co-owners, only one co-owner needs to be at least 55 and must reside in the residence.)

- The original residence must be eligible for a homeowner's exemption at the time of sale (transfer).
- The new home must be of equal or lesser value than the old residence.
- The law has been amended to allow taxpayers 55 or older to sell and purchase homes up to three times anywhere in California and take their tax benefit with them (Proposition 19).
- Persons 55 or older whose homes were destroyed by wildfires or certain other natural disasters can purchase a replacement home of any value and blend their new taxable value with that of their former residence.

Proposition 90

Proposition 90 extends Proposition 60 to participating counties.

Proposition 90 is an extension of Proposition 60. Proposition 60 limits the purchase of the new home to the same county. Proposition 90 allows the purchase of the new home in a different county in California. However, the county the homeowner is planning to move into may reject Proposition 90. The only counties that have accepted Proposition 90 are Alameda, Los Angeles, Orange, Santa Clara, San Diego, Riverside, San Bernardino, San Mateo, Eldorado and Ventura. To qualify, a homeowner must meet all the requirements for Proposition 60.

Change-in-Ownership Statement

Any person acquiring an interest in property subject to local taxation must notify the county assessor by filing a *change-in-ownership statement* within 90 days of the date of recording or, if the transfer is not recorded, within 90 days of the date of transfer. Failure to do so will result in a penalty. In practice, escrow typically handles this task.

Exemptions

Some of the numerous properties that are assessed are partially or wholly tax exempt. For example, many nonprofit charitable organizations, churches, all government, and several nonprofit educational institutions are entirely exempt. Other relief is available in various forms for homeowners, veterans, senior citizens, and renters.

Homeowner's exemption is \$7,000 in valuation.

Homeowner's exemption. Each residential property that is owner-occupied is entitled to an annual tax **homeowner's exemption** of \$7,000 from the "full cash value." The homeowner needs to apply only once for this homeowner's exemption if from year to year there is no change in the ownership of and residency on the property. A homeowner must have been the owner of record on or before January 1 (apply by February 15) and actually have occupied the property to claim this exemption for the upcoming tax year beginning July 1. A homeowner is allowed only one exemption at a time. Once this exemption has been filed, it remains in effect until terminated. The assessor must be notified of a termination, or an assessment plus 25% penalty may be made.

Veteran's exemption. California's war veterans may receive a \$4,000 **veteran's exemption** on the full cash value of their homes. Because it applies to low value property, the exemption has become meaningless. A totally disabled veteran or the veteran's surviving spouse may be eligible for a \$100,000 exemption. The exemption increases with inflation. The exemption increases to \$150,000 for low-income, 100% disabled veterans. This exemption increases based on inflation. In 2021, it was \$221,304 for an exemption with a household income limit of \$66,251.

Senior citizen's property tax postponement. Another form of relief is the *senior citizen's property tax postponement*. Homeowners who are at least 62 years old with household income of \$45,810 or less and who have a 40% home equity may be eligible to have the State of California pay all or part of the real property tax on their home. Persons of any age who are blind or totally disabled and meet the income requirement are also eligible. The taxes are postponed and not repaid until the property is sold or the claimant no longer occupies the property. The program was discontinued because of budgetary problems but was reinstated in 2016. Taxes are secured by a lien against the home in favor of the State of California.

Lower assessment for agriculture. The Urban Agricultural Incentive Zone Act provides tax incentives for urban farms from 0.1 acre to 3 acres. The Williamson Act allows local governments to tax land based upon agriculture use rather than land value if the owner contracts to keep it in agriculture use for a specified period.

Documentary transfer tax. Counties may adopt a documentary transfer tax of 55 cents for each \$500 or fraction thereof of seller's equity transferred. Cities in counties that have adopted the tax may add an additional tax. As an example, the City of Berkeley has a \$15 per \$1,000 property transfer tax, making the total city and county tax \$16.10. Most cities with transfer taxes have set them at half the county rate of 55 cents per \$500.

Parties can negotiate as to who pays the tax, but generally the seller pays in southern California but the buyer may pay in northern California.

The county recorder will not accept taxable conveyance for recording without a Documentary Transfer Tax Declaration. Documents subject to the tax must show the amount of tax paid on its face, it cannot be hidden.

INCOME TAXES

Real estate licensees should not advise a buyer or a seller as to income tax matters. Questions should be directed to an accountant or a tax attorney.

Today, income taxes play an important role in real estate owners' decisions, from buying or selling their personal residences to decisions involving the most exotic real investment properties. Because the tax laws are always changing, it is important for the real estate agent to stay abreast of them. Agents should advise buyers and sellers to seek professional advice from an accountant or tax attorney if the situation indicates a possible problem. Because of significant liability issues, the agent should refrain from providing tax advice. It could also be considered unauthorized practice of law. We will discuss income taxes as they relate to business and investment property, as well as to a personal residence.

While rental income is taxed at regular tax rates, capital gains are taxed at preferential rates in order to encourage investments. A capital gain is the gain on the sale of a capital asset. Capital assets include real estate.

Capital Gains

Before the 1997 Taxpayer Relief Act, capital gains were taxed at a 28% maximum tax rate if the capital assets were held more than one year. The 1997 act reduced the rate to 20% for long-term capital gains.

The 2003 Jobs & Growth Tax Relief Reconciliation Act cut the long-term capital gains to a maximum of 15% for gains from the sale of assets held for more than 12 months. (Gains from the sale of assets held for one year or less are taxed as regular income.) Except for high-income taxpayers, who had long-term capital gains taxed at 20%, the capital gains tax was 15% for most taxpayers.

A 3.8% Medicare surcharge is applied to high income taxpayers, which raises their capital gains tax to 23.8% (20% + 3.8%). The Tax Cut and Jobs Act (2017) changed the taxable income levels, but most Americans still pay 15% capital gains and high income pay up to 23.8%.

In California, the state income tax on capital gains is the same as for other income (no special treatment).

The long-term capital gains tax for married couples filing jointly has been reduced to 0% for incomes up to \$83,350 (2022).

Business and Investment Property

Property held for business and investment has some distinct differences in federal income tax treatment from property used as a personal residence. We will begin with the concept of depreciation.

Depreciation

The two most obvious and important characteristics of real estate investments are income and expenses. Real estate is one of those assets that benefit from a special accounting device for a special kind of expense called **depreciation**.

Land may not be depreciated.

Depreciation is a method of accounting for the wear that results from the use of a capital good. A capital good, such as a piece of equipment or a building, does not last forever. As it is used, it wears out or becomes obsolete; at some point, the owner must replace it or substantially repair it. Depreciation is used to reflect this replacement cost. The main reasons depreciation is allowed are to encourage investment in real estate and to reflect, in accounting terms, the real costs of property ownership. Only investment or income property may benefit from depreciation. Only improvements to land may be depreciated. Land is never depreciated.

The depreciation period is 27½ years for residential property and 39 years for nonresidential property.

For depreciation purposes, real estate can be divided into two categories:

1. Residential property
2. Nonresidential property

Residential property is where people live—for example, single-family residences, duplexes, triplexes, fourplexes, and multiunit apartments. A personal residence may not be depreciated. Nonresidential property is property that is not residential in nature—for example, industrial, commercial, office buildings, and other similar types of properties. Since January 1, 1987, all real property must use the straight-line method of depreciation where the value of the property is depreciated in equal annual amounts over the depreciable life of the property.

Generally, residential rental property must use a useful life of 27½ years and nonresidential property must use a useful life of 39 years. Either residential or nonresidential property may elect to use 40 years.

Basis

To explore the tax implications of investment properties, the agent must understand the concept of **basis** and know how to correctly compute the original basis, depreciable basis, and adjusted basis. The **original basis** (OB) is used to determine the depreciable basis and adjusted basis. The **depreciable basis** (DB) is used to determine the amount of allowable depreciation. The **adjusted basis** (AB), which changes as time progresses, is required to calculate the gain on the disposition of a property.

Original basis is purchase price plus buying expenses.

Original basis. The *original basis* of a property is the sum of its *purchase price* (PP) and the *buying expenses* (BE) on acquisition ($OB = PP + BE$). When a client purchases a property, the escrow statement includes the sale price and a listing of other costs and expenses. These amounts can be classified into four basic groups:

1. Purchase price (PP)
2. Operating expenses (OE)
3. Buying expenses (BE) (nonrecurring closing costs associated with the purchase)
4. Nondeductible items (ND), such as impound accounts

Depreciable basis. The *depreciable basis* is defined as the original basis minus the value of the land:

It is the cost basis of the improvements.

$$\text{depreciable basis} = \text{original basis} - \text{land value}$$

There are three methods for determining the value attributable to the land: the assessed value method, the appraisal method, and the contract method.

Assessed value method. The county assessor's property tax statement now lists the full cash value of both the land and the improvements. The value of the improvements for depreciation purposes is thus the assessor's determination of the percentage of the purchase price that represents the value of the improvements.

Appraisal method. The property owner may secure the services of a professional appraiser to appraise the building and the land. The appraisal method may give either a more or a less favorable ratio than the assessed value method. The taxpayer should compare the ratios from the two methods to verify which is more advantageous.

Contract method. One other method of determining the percentage of improvements is the contract method. With this method, the buyer and the seller determine the relative values of the improvements and land and designate these values in the contract, deposit receipt, or escrow instructions. Note that the determination must be at arm's length and reasonable. Before using this method, we strongly suggest that the owner obtain professional help. The owner should be prepared to justify value in the event of an IRS audit.

Adjusted basis. The *adjusted basis* of a property is the amount that the client has invested in the property for tax purposes. In other words, the adjusted basis is equal to original basis, plus capital improvements made, less all depreciation taken:

$$\text{adjusted basis} = \text{original basis} + \text{improvements} - \text{depreciation}$$

It is extremely important that the homeowner or investor understand the relationship between the basis and the final sales price of the property, because basis is the beginning point for calculating the amount of gain or loss on the sale. Calculation of the basis is affected by how the property originally was acquired.

- *Basis by purchase* is the price paid for the property, as described.
- *Basis by gift* is the donor's (gift giver's) adjusted basis plus the gift tax paid, not to exceed the fair market value at the time of the gift.
- *Basis by inheritance* generally is the fair market value at the time of the owner's death.

Computing gain. The basis is the beginning point for computing the gain or the loss on the sale, but numerous adjustments to the basis always are made during the ownership period. Some of the costs that increase the basis are title insurance, appraisal fees, legal fees, cost of capital improvements, and sales costs on disposition. Accrued (past) depreciation is deducted from the basis. The result is the adjusted basis.

The gain (or loss) is the difference between the adjusted basis and the sales price. An example may clarify this:

\$80,000	Purchase price
+ 800	Cost associated with purchase
<u>+ 3,000</u>	Capital improvements
\$83,800	
<u>- 12,500</u>	Accumulated depreciation
\$71,300	Adjusted cost basis
\$100,000	Sales price
- 4,000	Sales cost
<u>- 71,300</u>	Adjusted cost basis
\$24,700	Total gain

Computing Depreciation

To compute the depreciation, follow these six steps:

1. Compute the original basis
2. Determine allocation between land and building
3. Compute the depreciable basis
4. Determine whether the property is residential or nonresidential (If residential, you must use the 27½-year table for residential property. If nonresidential, you must use the 39-year table.)
5. Divide the depreciable basis by 27.5 (residential) or 39 (nonresidential).
6. This will give you the annual straight-line depreciation.

EXAMPLE

\$100,000 depreciable basis = \$3,636.36 annual depreciation
27.5 (residential)

\$100,000 depreciable basis = \$2,564.10 annual
39 (nonresidential)

Capital Gains Due to Depreciation

The capital gains tax rate for gains attributable to depreciation is the rate for regular income, with a maximum of 25%. As an example:

Property cost	\$300,000
Depreciation taken	<u>- 100,000</u>
Adjusted cost basis	\$200,000

If the property were sold at \$500,000, there would be a \$300,000 gain; \$200,000 of the gain would likely be taxed at the 15% rate, but the \$100,000 of the gain that is attributable to the depreciation that was taken would likely be taxed at the higher rate.

Mortgage Foreclosure Debt Relief Act of 2007

A person relieved of debt receives an IRS Form 1099C from the lender. Because debt relief is considered taxable income, this amount is ordinarily taxed. However, the Mortgage Foreclosure Debt Relief Act of 2007 provides that debt forgiveness on the principal residence resulting from loan restructuring, short sale, or foreclosure be excluded from income. Although the act has expired, the IRS, as well as California, has ruled that a short sale of 1–4 residential units will not be taxed on unpaid debt.

1031 Exchanges

The **1031 exchange** is part of federal tax law—Internal Revenue Code Section 1031 (the State of California has a similar code section). Section 1031 allows for exchange of personal property, as well as real property. Many of the concepts for 1031 **tax-deferred exchanges** come from court cases and IRS regulations and revenue rulings and from Section 1031.

Because of depreciation taken, as well as appreciation of property, many property owners do not want to sell and be required to pay the capital gains taxes. An exchange allows the owner to delay taxes and thus have more money to invest in a new property. Because of refinancing, some owners are in a position where their equity is not sufficient to cover their tax liability. An exchange allows them to defer tax liability.

EXAMPLE A woman owns a 10-unit apartment house she wants to dispose of, and she plans to buy a 20-unit apartment building. The 10-unit building would sell for \$1,000,000, with selling costs of \$50,000 and an adjusted basis of \$275,000. Her taxable gain would be as follows:

Sales price	\$1,000,000
Selling costs	<u>–50,000</u>
Net sales price	\$950,000
Adjusted basis	–275,000
Taxable gain	\$675,000

If the woman sells the property, she will have to pay federal and state taxes on the gain. She would be taxed at the 15% or 20% federal capital gains rate, possibly a 3.8% surcharge, up to a 25% rate for the portion of the gain attributable to depreciation, as well as having California regular tax liability on the gain. These taxes will have to be paid out of the proceeds from the sale. If she exchanged rather than sold, she would have her entire equity to invest in the new property and could defer any tax liability.

When a client becomes involved in a 1031 exchange, two questions must be answered:

1. Does the transaction qualify for a 1031 exchange?
2. What are the mathematics of the exchange?
 - How are equities balanced?
 - Who is giving or receiving boot? (Boot is unlike property that does not qualify for a tax-deferred exchange.)
 - Is the exchange partially or totally tax deferred, and what is the basis in the new property?

This section discusses the transactions that qualify for a 1031 tax-deferred exchange.

Tax-deferred exchanges involve at least three parties. Most agents think of A exchanging with B. While this is essentially what happens, more often three parties are involved. The most widely used exchange is the *buy-sell exchange*, sometimes called a *three-corner exchange* or *three-legged exchange*. The three people involved are the exchanger (person wanting to exchange), the seller (a person who wants to sell property and doesn't want to retain any property), and the buyer (a person who wants the property of the exchanger).

In a three-legged exchange, the buyer offers to purchase the exchanger's property, but the buyer does not have any property to exchange. So the exchanger needs to find another property ("up-leg"), the property the exchanger wants to acquire. When the exchanger finds the up-leg, the buyer buys this property from the seller. Now the buyer has a property to exchange with the exchanger. Note that if the exchanger sold her property to the buyer and then bought the seller's property, this transaction would be a purchase and a sale. To satisfy the IRS, the buyer will buy the seller's property and exchange with the exchanger, and this is all done in escrow in a matter of minutes. A general rule of exchanging is that any person can be the center (hub) of the exchange except the person wanting the exchange. Sometimes this procedure is called the *flashing of mirrors*.

EXAMPLE Here is an example of improper escrow instructions. E wants to complete a 1031 tax-deferred exchange, and S and B agree to cooperate in completing the exchange. E will transfer his property to B, and S will transfer his property to E to complete the exchange. Here is the diagram for this transaction.

$$S \rightarrow E \rightarrow B$$

E is the hub of the exchange; hence, the exchange is invalid. If the escrow instructions were to read, "S will transfer his property to B, B will transfer S's property to E, and E will transfer his property to B," then the following diagram would apply:

$$\begin{array}{ccccc} E & \leftarrow & B & \leftarrow & S \\ & \rightarrow & & & \end{array}$$

The latter would be a valid exchange.

When a client wants a 1031 tax-deferred listing, a statement that the client wants to make a 1031 tax-deferred exchange should be on the listing and in the multiple listing service. This statement helps convince the IRS that the client intends to make a 1031 exchange from the beginning of the transaction.

The buy-up rule. With the *buy-up rule*, to qualify for a totally tax-deferred exchange, the exchanger needs to trade up in value and put all equity dollars into the new property or properties.

Trade up means the new property must be equal to or greater in value than the old property. If the exchanger withdraws any cash, the cash withdrawn will be taxable. Withdrawing cash will not disallow the exchange—an exchange may be partial—but the client will not have a totally tax-deferred exchange.

EXAMPLE E wants to complete a 1031 tax-deferred exchange. The FMV of his property is \$350,000; therefore, the property he is trading for must be valued at \$350,000 or more. If E trades for property and also receives \$50,000 cash, he will pay taxes on \$50,000 only, and the \$300,000 he put into the new property will be deferred.

The entity rule. Three basic entities can hold property: individuals, partnerships, and corporations. The **entity rule** can be stated as follows: The way the exchanger holds property going into an exchange is the way the exchanger must hold the property coming out of the exchange. As an example, two partners cannot trade a partnership property for two properties, each of which would be separately owned by the partners.

The investment property rule. The **investment property rule** comes from Internal Revenue Code (IRC) Section 1031(a)(1):

In general—no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

Personal residence does not qualify for a tax deferred exchange.

Note: A personal residence is not held for productive use in a trade or business or for investment. Therefore, a person cannot have a tax-deferred exchange of his personal residence for business or investment property. (Like-kind property is discussed later in the unit.) By turning a personal residence into a rental or to a property for a trade or business, the former personal residence could be eligible for a tax deferred exchange.

Like-kind rule. Exchanges of property must observe the **like-kind rule**. In exchanging, property is categorized as either personal or real property. Personal property and real property are not like kind.

For personal property, like-kind property must be exactly the same in character or have the same nature, and this sometimes is very difficult to determine.

For real property, like-kind property is simply any piece of real property exchanged for any other piece of real property:

What Is Real Property?

Real property includes the following:

- Vacant land (unimproved real estate)
- Improved real estate, such as farms, buildings, orchards, and so on
- Leases that have a remaining term at the time of the exchange of 30 years or more (the 30 years may include all options)
- Mineral and water rights (if they are considered real property by the state, they are included)

Source: Critchton 122 F.2d 181 (1941), Rules, 55-749 and 68-3331

Therefore, the general rule for real property is that any piece of real property may be exchanged for any other piece of real property (like-for-like), except for inventory and personal residences.

The no-choice rule. If an exchange qualifies as an exchange, it must be treated as an exchange. If the real estate transaction was structured as an exchange, the gain must be deferred (postponed).

The no-loss rule. In conjunction with the no-choice rule is a rule called the **no-loss rule**. If a real estate transaction qualifies as an exchange, a loss cannot be recognized. Losses must be deferred along with gains. The no-loss rule comes from IRC Section 1031(a)(1).

To be a valid 1031 exchange, the exchanger cannot have control of the buyer's money.

Money control. An *accommodating party* is a third party who has control of buyers' money in a delayed exchange.

At no time can the exchanger have control of the buyer's money. This point was emphasized by the *June P. Carlton* case. Carlton owned ranch land and wished to structure a 1031 exchange. The agreement was to sell property to General Development Corporation (GDC) if a suitable replacement property (up-leg) could be found. Two suitable parcels of land were found by Carlton: property belonging to Lyons and Fernandez (sellers). Carlton gave an option to GDC, and GDC advanced \$50,000 to Carlton. Carlton thought that this would be a 1031 exchange.

The IRS argued, and the court agreed, that Carlton had sold the ranch land to General Development Corporation. Because Carlton had received \$50,000 in her hands, the \$50,000 did not go directly to the sellers, Lyons and Fernandez. One of the essences of an exchange is the transferring of property, and the mark of a sale is the receipt of cash. This case points out the extreme importance of proper procedure: the exchanger can never receive cash or even the right to cash. — *June P. Carlton v. Comm.* 385 F.2d 238 (5th Cir., 1967)

For a deferred exchange, the property must be identified within 45 days and the exchange completed within 180 days of transfer of the exchanged property.

Delayed exchange. IRC Section 1031(a)(3) allows a delayed exchange with the following characteristics:

REQUIREMENT THAT PROPERTY BE IDENTIFIED WITHIN 45 DAYS AND THAT EXCHANGE BE COMPLETED NOT MORE THAN 180 DAYS AFTER TRANSFER OF EXCHANGED PROPERTY—For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if—

1. such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or
2. such property is received after the earlier of—
 - the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or
 - the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

Properties purchased and closed within the 45-day period qualify as an identification.

Reverse exchange. In a **reverse exchange**, the replacement property is acquired before the property owner gives up her property. An exchange accommodation titleholder takes title to the property the exchanger wishes to acquire and holds the title until the sale of the exchange property can be arranged. This type of exchange removes the problem of acquiring property within a prescribed time period of the delayed exchange. However, the sale must be within 180 days.

WEB LINK



Boot is cash received, unlike property or debt relief.

For information on reverse exchange, as well as other forms of exchanges, visit the Federation of Exchange Accommodators website at www.1031.org.

Boot. Unlike property in an exchange is called **boot**. In many exchanges, some property will be given in an exchange that is boot. Boot is taxable to the person receiving it. It is important to understand that the property needs to qualify as like kind only to the person seeking the tax-deferred exchange.

Boot is defined as all other unlike properties: cash, paper (trust deeds or notes), and personal properties (cars, boats, planes, paintings, jewels, etc.).

Boot may be classified as cash boot or mortgage boot. *Cash boot* is a result of the balancing of equities, which must be done in every exchange. *Mortgage boot* is the difference between the loans on the conveyed property and the loans on the acquired property. This is also called *debt relief*. If the client assumes a mortgage larger than the one that he conveys, then he has paid mortgage boot. However, if he assumes a mortgage that is less than the one that he conveys, then he has received mortgage boot (debt relief).

EXAMPLE If I traded my real property for your real property and \$20,000, the \$20,000 I received would be taxable boot. If you gave me your new car as part of the trade for my property, then the value of the car would be taxable boot.

Assume we traded properties without boot but your property was free and clear of debt while my property was mortgaged and you assumed the mortgage. I would be taxed on the amount of the mortgage (debt relief).

Installment Sales

By using an **installment sale**, the investor can spread the tax gain on a sale over two or more years. The following guidelines concern the use of the installment method of reporting deferred-payment sales:

In an installment sale, the gain is taxed in the year it is received.

- The total tax to be paid in any one year may be reduced by spreading the payment amount, and thus the gain, over two or more tax years.
- The seller pays tax in future years with cheaper, inflated dollars.
- The seller does not pay the entire tax until after receiving the entire amount of the purchase price. A provision of the previous law stating that no more than 30% of the sales could be received in the taxable year of the sale to qualify for installment sales treatment has been eliminated.
- The installment sales method is automatic unless the taxpayer elects not to have the installment sale treatment apply.

Sale-Leaseback

Buyers and sellers can derive tax advantages through an arrangement in which property is sold with provisions for the seller to continue occupancy as a lessee. This form of transaction is called a **sale-leaseback**, *purchase-lease*, *sale-lease*, *lease-purchase*, or *leaseback*.

In a sale-leaseback, the seller benefits from capital being freed and rent that is a fully tax-deductible expense.

With a sale-leaseback, seller/lessees gain the advantages of getting property exactly suited to their needs without tying up working capital in fixed assets. Often, more capital can be raised this way than by borrowing. In addition, because leases are not considered long-term liabilities, rent is totally tax deductible. Frequently, writing off total lease payments is better than depreciation, for the land portion of property cannot be depreciated. If a property has a significant mortgage, a sale-leaseback would remove debt from a balance sheet, which would present a positive impression to lenders and purchasers of the corporate stock.

Often, only the land is sold and leased back because rent on land is a deductible expense, and improvements can be written off with depreciation deductions.

For companies working under government contracts that pay cost plus a fixed fee, rent is an allowable expense item, but mortgage payments are not. This is why many aircraft, electronics, and other defense plants are leased rather than owned.

Buyer/lessors gain the advantage of obtaining a long-term carefree investment and appreciation in the value of the property, as well as having the convenience of a built-in tenant. Usually, the yield on a sale-leaseback is higher than on a mortgage.

The lease payments will pay off the original investment, and the lessor still will have title to the property. The investment will not be paid off prematurely (as mortgages often are through refinancing), so the investor will not have to go out seeking another good investment to replace the one prematurely paid off. In addition, the lease terms often give the lessor a claim against other assets of the lessee in the event of a default, which is better security protection than a trust deed affords.

Principal Residence

Real estate that constitutes a homeowner's personal residence receives special tax treatment. The term *personal residence* is generally understood to refer to the taxpayer's **primary personal residence**, the dwelling in which a taxpayer lives and which the taxpayer occupies most of the time. A taxpayer may have only one principal residence at a time, and it may be as follows:

- Single-family house
- Houseboat
- Mobile home
- Motor home
- Trailer
- Condominium
- Cooperative housing

If you live in one unit of a multiple-unit dwelling, that unit will be considered your principal residence.

Primary or secondary residence. The taxpayer's primary residence is the place occupied more often than any other. All other residences are termed *secondary residences*. One secondary residence will receive favorable income tax treatment.

Land. The term *residence* includes not only the improvements but also the land [Rev. Rul. 56 420, 1956 2 (CD 519)]. However, vacant land cannot be considered a personal residence. When a principal residence is located on a large tract of land, the question arises as to just how much of the land is included with the principal residence. There is no clear-cut answer to this question, but the courts have made the determination based on the use and the intent of the taxpayer rather than on the amount of land involved.

The universal exclusion requires two years' occupancy and can be taken every two years.

Universal exclusion for gain on sale of principal residence. A seller of any age who has owned and used the home as a principal residence for at least two years of the five years before the sale can exclude from income up to \$250,000 of gain (\$500,000 for joint filers meeting conditions). In general, the exclusion can only be used once every two years.

Married couples filing jointly in the year of sale may exclude up to \$500,000 of home-sale gain if either spouse owned the home for at least two of the five years

before the sale. Both spouses must have used the home as a principal residence for at least two of the five years before the sale.

One spouse's inability to use the exclusion because of the once-every-two-years rule won't disqualify the other spouse from claiming the exclusion. However, the other spouse's exclusion cannot exceed \$250,000.

EXAMPLE Mary sells her principal residence in December 2010 at a \$100,000 gain. She is single at that time, and qualifies for and claims the home sale exclusion. She marries Abel in May 2011 and moves into the home that has been his principal residence for the 20 years of his bachelorhood. If Abel sells the home the following July, up to \$250,000 of his profit is tax free.

The two-year occupancy need not be continuous. For example, a person could have occupied the property as a principal residence for 6 months and then rented it for a year but later moved back for an 18-month occupancy. If the total occupancy is 24 months during a five-year period, then the occupancy requirement will have been fully met.

California has adopted the federal universal exclusion of \$250,000/\$500,000. If a sale gain meets the federal criteria for exclusion, it would also be excluded from California income taxation.

Tax Benefits

Taxpayers are eligible for certain income tax write-offs while they own their homes. The general rule for income tax purposes is that ownership transfers when the title is transferred (a deed given) or when the buyer is given the rights of possession (the benefits and burdens of ownership), whichever occurs first. To be eligible for these tax deductions, a taxpayer must be the legal owner or equitable owner of the home.

Note: When the property is purchased on a land contract, the owner has equitable title. According to tax law, a buyer who has possession of the property (equity) owns the property and receives all the tax deductions of the property.

During ownership, owners taking itemized deductions may write off real estate taxes (income tax plus real estate taxes up to a \$10,000 limit) and mortgage interest in the year they are paid. Note that paying monies into an impound account is not the same as paying them to the agency to which they are owed. Monies paid into an impound account are not deductible. Only the money paid from the impound account to the proper authority can be deducted.

Property Tax Deduction

Prior to 2018, all property taxes were tax deductible for taxpayers taking itemized deductions. The 2017 tax reform now limits the deduction to \$10,000 for all taxes, meaning state income tax as well as property taxes. The result has been that some of the benefits of home ownership were lost for many taxpayers.

Home interest and property taxes are deductible.

Home interest. Interest on a primary residence and second home will be treated as home mortgage interest on mortgage amounts of up to \$750,000. Interest is not deductible for a home equity loan if the loan is for a purpose not related to the property.

For homes that qualify as either a primary home or a second home, the interest is called *home mortgage interest* or *qualified residence interest*. There are two types of home interest: acquisition indebtedness and home equity indebtedness (or equity indebtedness).

Acquisition indebtedness interest. Taxpayers may deduct interest on home acquisition debt of \$750,000 or less (first and second home).

EXAMPLE A man purchased a home in 2021 for \$10,000,000 with a \$500,000 purchase money loan. He is limited in his interest deductions to the interest on \$75,000 only.

Home equity debt interest. Taxpayers may deduct interest on up to \$100,000 of home equity debt (money borrowed on property to use for other purposes). However, the money must be for the purpose of buying, building, or improving taxpayers' residences.

Home Improvements

Systematically recording amounts spent for **home improvements** and retaining any and all receipts are very important to the homeowner. Unfortunately, they are often neglected. Many homeowners are completely unaware of the ultimate tax implications of the home improvements or capital improvements that are added to their properties through the years. These improvements may be added to the homeowner's basis, making the adjusted basis greater and reducing the gain at the time of sale.

There is a great deal of misunderstanding about what items are classified as home improvements. The IRS defines improvements differently for homes than it does for rental property. Examples of home improvements include the following:

- Electrical wiring (new, replacement, rearrangement)
- Floors
- Heating units
- Partitions (including removal)
- Pipes and drainage (including replacement)
- Roof (new or reshingling over old shingles)
- Walls (plastering, strengthening)
- Room additions
- Patios
- Pools

- Fencing
- Landscaping (trees, shrubbery, grass seed, etc.)
- Sprinkler systems

Maintenance items are not home improvements. Some examples are as follows:

- Painting
- Papering
- Carpeting
- Drapes
- Furniture
- Replacement of built-in appliances (stoves, ovens, dishwashers, etc.)

Relief for “forced” sales. A relief provision may apply to some taxpayers who sell their principal residence but fail to meet the once-every-two-years rule for use of the exclusion. If the taxpayer’s failure to meet the rule occurs because the home must be sold due to a change in the place of employment, health status, or—to the extent provided by regulations—other unforeseen circumstances, then the taxpayer may be entitled to a partial exclusion. Under these circumstances, the excludable portion of the gain that would have been tax-free had the requirements been met is computed proportionately.

Capital loss. A taxpayer may use a capital loss to offset a capital gain in the year of the loss. If a taxpayer lost \$100,000 on one capital sale but made \$100,000 on another capital sale in the same year, there would be no capital gain tax. If, however, the taxpayer made \$50,000 on the profitable sale, the taxpayer would have a \$50,000 loss carryover. The taxpayer can take \$3,000 of the carryover loss and use it as a deduction against income each year. To take advantage of a capital loss, a taxpayer should consider selling another capital asset where a profit would be made in the same year as the property loss.

FIRPTA

Before 1985, a foreigner (a person who is neither a U.S. citizen nor a U.S. resident alien) could purchase property in this country and later sell it, and then move back to her homeland and not pay income taxes on the sale of the property. Because it is very difficult, if not impossible, to collect delinquent taxes from such an individual, the U.S. Congress passed the **Foreign Investment in Real Property Tax Act (FIRPTA)**. The State of California passed a similar law. To distinguish between federal and California law, the federal law will be called *FED-FIRPTA* and the state law *CAL-FIRPTA*.

Federal Withholding

FED-FIRPTA generally requires that a buyer withhold estimated taxes equal to 15% of the sale price in transactions involving real property in the United States sold or exchanged by a foreign person. In addition, CAL-FIRPTA requires that a

buyer withhold estimated taxes of $3\frac{1}{3}\%$. The 15% estimated withholding must be reported and paid to the Internal Revenue Service within 10 days after the close of escrow. If the buyer fails to withhold the estimated taxes, and the seller fails to pay taxes on the sale, the buyer is subject to a penalty equal to 10% of the purchase price or the seller's actual tax liability plus interest and penalties, whichever is less.

For personal residences, FED-FIRPTA applies only to sales prices of \$300,000 or more. When a buyer signs a certification (Figure 14.2) stating that he plans to use the property as a personal residence and the purchase price is less than \$300,000, the buyer is relieved of withholding estimated taxes.

All other property—investment, rental, commercial, land, and so forth—requires withholding when a foreign person sells the property. If a foreign person owns a five-unit apartment building and sells it for \$600,000, \$90,000 will have to be withheld for the federal government and \$20,000 for the State of California.

If more than one person owns the property and some are U.S. citizens and some are foreign, the amount of withholding must be prorated on the basis of the capital invested. If a married couple own property and one spouse is a citizen and the other is not, withholding is prorated 50/50.

Withholding under section 1.1445(a) may be reduced or eliminated pursuant to a withholding certificate issued by the Internal Revenue Service in accordance with the rules of this section. (It usually takes six to eight weeks to receive the certificate from the IRS.)

California Withholding

As of 2003, buyers of property, other than the seller's personal residence, must withhold $3\frac{1}{3}\%$ of the net proceeds of the sale and remit them to the Franchise Tax Board at close of escrow. Besides the seller's personal residence, the following are other exclusions:

- Property sold for less than \$100,000
- Property sold at a loss
- Property involved in a tax-deferred exchange
- Involuntary conversion (foreclosure sale)

TAX SHELTER

Because depreciation is shown as an expense for income tax purposes, it can reduce the tax liability of a real estate investor and could result in a paper loss, even though cash receipts exceed cash expenses.

Taxpayers can use real estate operating losses (passive losses) to offset real estate income without limit. Real estate losses also can be used, with limitations, to offset active income such as wages.

FIGURE 14.2: Seller's Federal Residency Declarations

FEDERAL RESIDENCY DECLARATIONS Foreign Investment in Real Property Tax Act (FIRPTA) - International Revenue Code §1445		
NOTE: This form is used by the seller's agent and escrow when the sale of real estate requires the seller's status for income tax purposes as a citizen, resident alien or neither, to provide information for determining whether the seller is a nonresident alien and escrow withholds 10% of the sale price.		
DATE: _____, 20____, at _____, California. <i>Items left blank or unchecked are not applicable.</i>		
FACTS:		
1. This declaration complies with Section 1445 of the United States Internal Revenue Code regarding Seller's status as a citizen or resident of the United States or otherwise, and is for reliance by Broker and any buyer.		
1.1 Seller _____ U.S. Tax Identification Number (or Social Security Number) _____		
1.2 Seller _____ U.S. Tax Identification Number (or Social Security Number) _____		
2. Regarding the proposed sale of real estate referred to as _____		
SELLER'S DECLARATIONS:		
3. Seller hereby declares:		
3.1 <input type="checkbox"/> I am a citizen of the United States of America;		
3.2 <input type="checkbox"/> I am a resident alien of the United States of America; my resident status is established by the following:		
a. <input type="checkbox"/> I have been declared a permanent legal resident of the United States by the U.S. Immigration and Naturalization Service. Resident Alien registration number _____, or;	Exclusions: Residency does not include days during which Seller: <ul style="list-style-type: none">• remained in the U.S. due to a medical condition which arose while they were visiting;• was in transit between two points outside the U.S.;• worked for an agency of a foreign government;• was a teacher, trainee, or student; or• participated as a professional athlete.	
b. <input type="checkbox"/> I have resided at least 31 days in the United States during the current calendar year, and my days of residence in the United States over the last three years are as follows: Current calendar year..... X ₁ = 0 Last calendar year..... X _{0.334} = 0 Second preceding year..... X _{0.167} = 0 TOTAL DAYS = 0		
Since the total days equals or exceeds 183 days, I meet the substantial presence test of Internal Revenue Code §7701(b)(3).		
4. <input type="checkbox"/> I am neither a United States citizen nor a resident alien as defined in Item 3, above; and		
4.1 Unless I obtain a "qualifying statement" [IRC §1445(b)(4)], or other special permission from the Internal Revenue Service, I authorize Buyer of the above-referenced real estate to deduct and withhold 10% of the sales price for the federal government. I further authorize Escrow-holder to deduct these amounts from funds due to me at the close of escrow, and to deposit it as a tax deposit in an authorized commercial bank.		
5. I consent to the reliance on this declaration of the Brokers, Agents, Escrow-holder, and Buyer in any transaction regarding this real estate.		
6. Note: This transaction is exempt from IRC §1445 withholding if the sales price is \$300,000 or less and Buyer will use the real estate as his residence.		
BUYER'S ACKNOWLEDGMENT:		
7. I have read and received a copy of this Seller's Residency Declaration.		
8. <input type="checkbox"/> I hereby declare I will use the real estate as my residence. If the final sales price is \$300,000 or less, I consent to reliance on this declaration by Brokers, Agents, Escrow-holder and the nonresident alien Seller.		
I declare under penalty of perjury that the foregoing is true and correct. Date: _____, 20____ Seller: _____ Seller: _____	I declare under penalty of perjury that the foregoing is true and correct. Date: _____, 20____ Buyer: _____ Buyer: _____	
FORM 301 03-11 ©2016 RPI — Realty Publications, Inc., P.O. BOX 5707, RIVERSIDE, CA 92517		

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Taxpayers with an adjusted gross income of less than \$100,000 can use real estate losses (which are considered passive losses) to shelter passive income such as dividends.

Estate Tax

Death is a tax shelter in that it avoids capital gains tax on the increased value of assets of the deceased. However, the assets may be subject to an estate tax. For persons dying in 2022, the estate tax exclusion for an individual is \$12.06 million (adjusted annually for inflation). The maximum estate tax rate is 40%. The estate tax exclusion is scheduled to be cut in half January 1, 2026.

Inherited property receives a stepped-up basis, meaning that the property is valued at the time of decedent's death. This means the asset is shielded from any capital gains based on appreciation in value that occurred before to the decedent's death.

If a decedent gifted property prior to death, then the recipient would retain the cost basis of the grantor and a subsequent sale could subject the grantee to substantial capital gain taxation.

California no longer has an estate tax, although several states do tax estates. Differences in estate taxation, as well as income tax rates, have caused some wealthy individuals to make economic decisions as to where their residence should be.

Federal Gift Tax

The federal gift tax is taxed to the donor. The annual exemption is \$15,000 per donee. A married couple with three children could give each child \$15,000 each year, making total gifts of \$90,000 each year that are tax exempt.

PROBATE AND LIVING TRUSTS

Probate is the court-approved procedure to pay off the just debts of a deceased person and to distribute the assets according to a will or intestate succession. There are three reasons for probate avoidance:

- The cost of probate
- Reduction of possible estate taxation
- Time

In California, a \$1,000,000 estate could be subject to a \$23,000 attorney fee plus \$23,000 for an executor fee, for a total of \$46,000. There are also appraisal costs.

Probate may be avoided by use of a joint tenancy, community property, or a revocable living trust.

With a *living trust*, trustors transfer their property to their trust but retain absolute control and serve as trustee. Upon death, a successor trustee distributes the estate without probate expenses.

For larger estates, it is possible for married couples to double the size of their exemption. Assume a couple has an estate worth over \$20 million and the current exemption from estate taxation is \$12 million. They could have two trusts, known as an A-B trust. If one spouse dies, the spouse could give \$12 million, the exempt amount, to the trust for the benefit of the successors (A trust). The balance of the trust would go to the B portion of the trust for the benefit of the other spouse. Since estate taxes are not levied on gifts to a spouse, the first death is not subject to estate taxation. When the surviving spouse dies, that estate goes to the A trust, but the one portion that is subject to estate taxation would be the portion in excess of \$12 million. The B trust, which is distributed to the successors (heirs), therefore, will have received a \$24 million exemption from estate taxation rather than \$12 million.

SUMMARY

Real estate taxes are ad valorem taxes. Property is reassessed when sold, and property is taxed for the basic levy at a maximum rate of 1% of the fair market value (Proposition 13). The tax rate cannot increase more than 2% per year. Additional special assessments can be added, up to 1% of the fair market value. The homeowner's exemption is \$7,000 from the assessed valuation. The exemption for a totally disabled low-income veteran was \$202,000 for 2021.

Tax transfers between family members may be exempt from reassessment. For taxpayers older than 55, a sale and repurchase of a principal residence within the same county may allow the taxpayer to keep the old assessed valuation if the new purchase is at the same price as or less than the sales price of the old residence. For residents over 55 years of age, the transfer of assessed value can extend to other counties if the other county has agreed to it (Proposition 90).

For some senior citizens (low income or disabled), a postponement of taxes is possible until the claimant no longer occupies the property.

Capital gains are sale gains on the sale of capital assets. A long-term gain, over 12 months, is currently taxed at 15%, except the rate is 20% for high-income taxpayers. There is also a 3.8% Medicare surcharge for high-income taxpayers.

Depreciation is a noncash expense for tax purposes that applies to improvements to income, business, and investment property. It is a return on the investment. Any gain on sale is taxed from the basis adjusted by adding buying expenses and capital improvements to the purchase price, then deducting the accumulated depreciation (adjusted cost basis). For residential property, a 27½-year life is used for depreciation purposes. For nonresidential property, a 39-year life is used.

A taxpayer can defer gains on the sale of business or investment property by use of a 1031 exchange. The property must be like-for-like (real property for real property), and the taxpayer would be taxed only on boot received. Boot is unlike property received, as well as debt relief. A delayed tax-deferred exchange is possible if the taxpayer identifies the property within 45 days of a transfer and closes escrow within 180 days of the transfer.

Installment sales allow a taxpayer to spread a gain over the years in which the gain is received. This could mean a lower tax rate.

A sale-leaseback allows a seller to gain operating capital, reduce debt, and have the 100% tax deduction of business rent.

Residential property owners have a tax advantage for interest payments on \$750,000 in acquisition indebtedness (for primary and secondary residences), as well as up to \$100,000 in equity indebtedness if used for purchase or improvements.

A homeowner's gain on the sale of a residence is determined by deducting the adjusted cost basis (cost plus improvements) and the selling expenses from the selling price. The Taxpayer Relief Act of 1997 made some significant changes to tax law regarding gains on the sale of real estate. These changes include a once-every-two-year exclusion from taxation for gains on the sale of a principal residence that has been occupied by the sellers for at least two years during the prior five-year period. This exclusion from taxation is as follows:

- Married couples, \$500,000
- Single persons, \$250,000

When a property is sold by a foreign national, it is the buyer's responsibility to withhold 15% of the price for federal income taxes and 5% for state income taxes, unless the transaction is exempt from such withholding. The state withholding applies to all nonresidents of California.

Depreciation is a paper expense that can be used to shelter up to \$25,000 in active income from taxation (The maximum amount is reduced by \$1 for every \$2 in income over \$100,000).

Death results in a stepped-up cost basis that is based on value at the time of the decedent's death. There is a federal estate tax but no California estate tax. By using a living trust, a couple can double the amount of their estate tax exemption.

CLASS DISCUSSION TOPICS

1. A buyer of an apartment building has \$60,000 annual rent, total cash expenses of \$52,000, and depreciation of \$9,000. What are the investor's benefits, if any?
2. A person renting a home pays \$1,200 per month in rent. The owner offers it for sale to the tenant at a price of \$240,000. The tenant is offered a \$200,000, 7%, 30-year loan; PITI payments will come to \$1,650 per month. Discuss the economic viability of this purchase.
3. Diagram a three-party exchange.
4. Compute the adjusted basis when the original basis was \$137,500, improvements to the property totaled \$31,650, and depreciation taken was \$11,436.
5. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. The *MOST* difficult tax to avoid is the
 - a. sales tax.
 - b. real property tax.
 - c. income tax.
 - d. estate tax.
2. The months of November, December, February, and April relate to
 - a. real property taxes.
 - b. income taxes.
 - c. estate taxes.
 - d. sales taxes.
3. What did Proposition 13 provide for?
 - a. It set a maximum tax rate.
 - b. It set assessments for property acquired before 1978 back to the value on the 1975 tax roll.
 - c. The tax can be increased 2% per year.
 - d. All of these.
4. A proposition that allows a tax assessment for certain homeowners to be transferred from one county to another is Proposition
 - a. 13.
 - b. 30.
 - c. 40.
 - d. 19.
5. The homeowner's property tax exemption is
 - a. \$50,000 for a single person.
 - b. \$4,000 from assessed valuation.
 - c. \$7,000 from assessed valuation.
 - d. the first \$100,000 of assessed valuation.
6. Depreciation for a residential property uses
 - a. the straight-line method.
 - b. a 27½-year table.
 - c. a 39-year table.
 - d. both a and b.
7. To have a tax-deferred delayed exchange, which of the following is required?
 - a. The exchange property must be identified within 45 days after the taxpayer relinquishes his property.
 - b. The sale must be completed within 180 days after the taxpayer relinquishes his property.
 - c. Both of these.
 - d. Neither of these.

8. To have a 1031 tax-deferred exchange, you need all of the following *EXCEPT*
- a. like-for-like properties.
 - b. to receive boot rather than pay it.
 - c. a trade of investment real property for investment real property.
 - d. to hold property after the exchange in the same manner as you held property going into the exchange.
9. Albert wants to exchange property with Baker. Which would be boot to Albert in the exchange?
- a. Cash given by Albert to balance equities
 - b. Cash received by Albert to balance equities
 - c. Acceptance of a greater debt by Albert
 - d. Both a and c
10. A homeowner can receive preferential tax treatment by
- a. an interest deduction.
 - b. use of the universal exclusion.
 - c. a property tax deduction.
 - d. all of these.

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UNIT FIFTEEN



PROPERTY MANAGEMENT AND LEASING

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- describe the variety of positions, duties, and responsibilities available within the property management field;
- explain the different types of properties managed and how each affects the manager's activities;
- name the types of leases and their provisions;
- explain landlord and tenant responsibility; and
- describe how a tenant can be evicted.

KEY TERMS

Accredited Management Organization	estate at will	Protecting Tenants at Foreclosure Act of 2009
Accredited Resident Manager	estate for years	recapture clause
assignment	exculpatory clause	rent schedule
Certified Property Manager	gross lease	resident manager
condominium association management	habitability	scheduled rent
Costa-Hawkins Rental Housing Act	Help Families Save Their Home Act	security deposit
effective rent	holdover clause	step-up lease
Ellis Act	Institute of Real Estate Management	sublease
estate at sufferance	late charge	30-day notice
	management agreement	three-day notice
	net lease	trust ledger
	percentage lease	unlawful detainer
	periodic tenancy	

THE PROPERTY MANAGEMENT FIELD

Property management is not a new field of specialization. In biblical days, owners employed “overseers” who supervised the running of estates. In colonial America, English companies that had land charters, such as the Virginia Company, employed managers to run their operations.

Most properties were managed by owners. The growth of the modern property management profession was facilitated by two factors:

1. The invention of the electric elevator and the use of structural steel, which allowed for highrise construction, starting in the late 1800s. High-rise construction allows a property owner to have more tenants with a smaller construction footprint. The large number of tenants creates a greater responsibility for a landlord. These huge structures generally were owned by large companies or groups of investors, who had to hire managers for their operations.
2. The Great Depression of the 1930s, which resulted in lenders accumulating vast inventories of property because of foreclosures. To maximize the income and protect the property, these lenders required property managers.

Professionalism

The number of people involved in property management increased rapidly. However, because many of these managers lacked reasonable qualifications due to limited knowledge and abilities, there were many failures within the property management field.

In 1933, property managers sought to improve their professional standing. Approximately 100 companies met and formed the **Institute of Real Estate Management (IREM)**, a subdivision of the National Association of REALTORS® (NAR). These companies certified that they would

- refrain from commingling their clients' funds with personal funds,
- bond all employees handling client funds, and
- disclose all fees, commissions, or other payments received as a result of activity relating to the client's property.

This move improved the situation, but after several years it became apparent that the companies were not meeting the standards set, mainly because of constant personnel changes.

IREM developed the designation **Certified Property Manager (CPM)** to certify individual managers rather than the companies that employed them. The concept has been successful. IREM's certification requirements are designed to ensure that managers have the general business and industry-specific experience necessary to maintain high standards within the profession.

IREM has the additional designations of **Accredited Resident Manager (ARM)** for residential managers, while **Accredited Management Organization (AMO)** is a designation given by IREM to a company.

There are several other professional property management organizations. They include the Real Estate Management Broker's Institute of the National Association of Real Estate Brokers, the Apartment Owners and Managers Association of America, the Building Owners and Managers Association International (BOMA), and the National Society of Professional Resident Managers. These organizations produce publications, conduct seminars, and award professional designations.

Kinds of Property Managers

There are three basic kinds of managers: licensee/property managers, individual property managers, and resident managers.

A person working under direct supervision of a licensed property manager need not be licensed.

Licensee/property manager. A licensee/property manager is a licensee of a real estate office or agency that manages a number of properties for various owners. Such a manager may be a member of the firm who spends full time in management, may be self-employed as a managing agent, or may be one of several managers in the management department of a large real estate company. Persons working under the direct supervision of a licensed property manager need not be licensed to show property, accept preprinted rental applications, provide information on rental terms, and accept signed leases and deposits.

Individual property manager. An *individual property manager* manages a single property for the owner and may or may not possess a real estate license. This person usually is employed on a straight salary basis.

Resident manager. A **resident manager**, as the title implies, lives on the property and may be employed by the owner or by a managing agent. The resident manager does not require a real estate license. A resident manager usually is qualified for this assignment by previous management experience or by special training.

State law requires a resident manager for property containing 16 or more units and specifies that the resident manager must be a “responsible person.” Mobile home parks having more than 50 units must have a resident manager.

Professional Qualifications of a Property Manager

What kind of person is qualified to be not only a human relations specialist but also a detail manager? Such a person must be able to play the following roles:

- Merchandising specialist. The property manager must be able to advertise and to sell prospective tenants on the merits of a building.
- Leasing expert. Being well informed on all types of leases assists a manager in determining the most beneficial lease for a particular client.
- Accounting specialist. The law requires that certain records be kept and reports made.
- Maintenance supervisor. Preventive and corrective maintenance will prevent expensive repairs at some future date.
- Purchasing supervisor. The manager must keep up with all current technological advances in building in order to be able to recommend needed replacements for obsolete installations.
- Credit specialist. Credit ratings are extremely important. Knowing whether a tenant can live up to the terms of a lease is vital.
- Insurance adviser. Understanding the various types of policies available and the extent of coverage can save both the owner and the tenant time and money.
- Tax interpreter. A manager must be well versed in property taxes and their effect on the property being managed. The manager should be cognizant of the relationship of depreciation to the income and profit of the property.
- Psychology expert. This capacity is crucial to day-to-day communication.
- Budget manager. A property manager must be able to maintain and operate within the budget established for the property.

Functions of a Property Manager

The author of the following statement is unknown, but the words give a splendid overview of the making of a property manager:

The past is his experience, and with its valuable ramifications, he is helped immeasurably to mold the plans for his future. During his years of experience, he has built and sold houses, appraised property, dealt in long-term commercial and industrial leases, made many complicated and intricate transactions, bought and sold hotels—in short, has had a long experience with the public, including businessmen, husbands and wives, doctors and lawyers, engineers and financiers, yes, with gamblers, beggars and thieves, mothers-in-law, fanatics, the feeble-minded, strong and weak characters of every type and description, politicians too, and with this experience has

automatically been turned out a well-rounded, socially conscious, alert, and aggressive person—in short, a skillful businessman, and when he has reached this point, he has automatically qualified for the job of property management.

Depending on the complexity of the property, the property manager's duties and responsibilities are many and varied. Inherent in these duties is the dual role of an administrator for the owner and an advocate for the resident.

The property manager's responsibility is to understand and communicate with both parties. The astute property manager is in an ideal position to both represent the owner and work with the residents with procedures that are fair and equitable. The manager should recognize that the owner wants a fair return on investment and that the resident wants decent housing or space that is properly maintained.

Administrator for the owner. As the administrator for the owner, the property manager must recognize that the owner is interested primarily in the following:

- The highest return from the property, realizing its highest and best use
- The enhancement or preservation of the physical value of the property

Specific duties of a property manager. Under the property management system, the owner is relieved of all executive functions as well as of all details connected with the operation or physical upkeep of the property.

A conscientious manager realizes the following:

- Renters need to know what is expected of them and what they can expect from the owner. (This should be stated in writing.)
- Residents' questions should be handled properly and promptly.
- If any request is denied, the manager should state why and avoid pointless arguing.
- The owner, manager, and employees should guard against the attitude that all tenants are unreasonable. However, it would be disastrous to adopt the principle that the customer is always right. The resident is, of course, always entitled to fair and sympathetic treatment.
- The property manager must make certain that tenants' and prospective tenants' legal rights are protected.

As an agent, the property manager must show good faith and loyalty to her principal (the owner); perform her duties with skill, care, and due diligence; fully disclose all pertinent facts; avoid commingling funds; and refrain from personal profits without the principal's full knowledge and consent.

State-defined responsibilities. In addition to the general responsibilities described here, the California Department of Real Estate has prepared a list of specific duties:

- Establish the rental schedule that will bring the highest yield consistent with good economics

- Merchandise the space and collect the rents
- Create and supervise maintenance schedules and repairs
- Supervise all purchasing
- Develop a policy for tenant-resident relations
- Develop employee policies and supervise employees' operations
- Maintain proper records and make regular reports to the owner
- Qualify and investigate prospective tenants' credit
- Prepare and execute leases
- Prepare decorating specifications and secure estimates
- Hire, instruct, and maintain satisfactory personnel to staff the building(s)
- Audit and pay bills
- Advertise and publicize vacancies through selected media and broker lists
- Plan alterations and modernizing programs
- Inspect vacant space frequently
- Keep abreast of economic conditions and posted competitive market conditions
- Pay insurance premiums and taxes and recommend tax appeals when warranted

Basic Responsibilities

The principal functions of a property manager can be summarized as seven basic responsibilities:

1. Marketing space by advertising and securing desirable tenants
2. Collecting rents
3. Handling tenant complaints and physically caring for the premises
4. Purchasing supplies and equipment and paying for repairs
5. Hiring needed employees and maintaining good public relations
6. Keeping proper records and preparing required reports
7. Making recommendations to the owner on matters of improvements, changes in use and insurance coverage, and operational changes requiring owner approval

Establishing rent schedules. Rent schedules are the rents to be asked for and set forth in the lease. **Effective rent** is often less than **scheduled rent** if inducements are provided to the tenant, such as one month's free rent for a one-year lease. If the scheduled rent were \$1,200 a month, the effective rent in this case would only be \$1,100 per month ($\$1,200 \times 11 \text{ months} = \$13,200$ for the year or \$1,100 per month). *Rent levels* usually are determined on the premise of scarcity and comparability of values in the area. How much rent is charged will affect the cost and time required to rent the unit, the length of each tenant's stay, decorating

costs between tenants, and overall vacancy rate. To set up proper **rent schedules**, the manager must make a skilled and thorough analysis of the neighborhood. This analysis will include but not be limited to the following:

- The character of the immediate neighborhood
- The economic level and size of families
- Trends in population growth and occupants per unit
- Directional growth of the community and expansion and growth of local industries
- Availability of transportation, recreation, shopping, churches, and schools
- The condition of the housing market versus population growth trends
- Current area vacancy factors
- Similarly desirable rental units currently available

The objective of the analysis is to set up a rental schedule commensurate with the findings.

WEB LINK

There are internet sites that provide data on comparable properties. They are very helpful in setting rent schedules. One such website is www.rentometer.com.

The objective of good property management is to achieve the combination of rent and vacancy that provides the owner with the greatest net. Conducting surveys and establishing rental schedules are very important. Statistics show that uncollected rent is worse than a vacancy, because the property suffers wear and tear from the occupant and the opportunity to place a desirable tenant in the unit is lost. In establishing rent levels, the property manager should realize that a vacant unit is not in competition with units already rented. The only competition is with other vacant units.

A number of owners are using algorithms to determine rents. They use mathematical formulas based on the data entered.

KNOWING THE LAW

The property manager must know the legal rights of tenants and legal procedures to take in notices and evictions. The manager must be aware of federal and state antidiscrimination statutes. The manager must also understand what actions could be construed as sexual harassment. Knowledge of local and state building health and safety codes, as well as any rent control restrictions, is also necessary as they relate to management duties.

The Occupational Safety and Health Act (OSHA) is important to property managers who are hiring seven or more employees. The law requires compliance with safety standards, recordkeeping, and reporting. It covers equipment condition, maintenance, and safety precautions. The maximum penalty OSHA can assess for a single violation is \$13,653 (2021). The amount of \$136,532 can be assessed for repeated or willful violations (2021). California has passed its own Cal OSHA provisions.

TYPES OF PROPERTY MANAGED

Properties requiring management include office buildings, apartment buildings and other residential properties, commercial structures, shopping centers, distribution centers, public buildings, recreation centers, hotels, motels, industrial facilities, restaurants, and theaters. Recently, other properties have joined the list and are rapidly gaining in importance and popularity. These include the following:

- Condominium associations
- Industrial parks
- Mobile home parks
- Miniwarehouses
- Marinas
- Airports

A few of these are described in more detail in this section.

Residential Properties

Residential properties are by far the most numerous of the properties subject to professional management. There are approximately 139.68 million occupied housing units in the United States (Census Bureau 2019 estimate).

The housing market is stratified, meaning that the marketplace behaves differently based on price range. There may be a high vacancy rate at one rental range and a severe housing shortage at another range. Nevertheless, a general nationwide housing shortage has resulted in a rapid rise in rental rates. Three million new housing starts each year would be required merely to replace end-of-the-line units that should be demolished.

Residential property managers should be familiar with state and local rent control ordinances to make certain that rents and rent increases charged are not in violation of the law. Rent control restrictions vary by community.

Allowable rental increases are also subject to different restrictions. Under the **Costa-Hawkins Rental Housing Act**, landlords who are subject to rent control are free to establish new base rents for new tenants, as well as for sublessees and assignees when landlord consent is required for the sublease or assignment.

The Costa-Hawkins Act also prevents cities from imposing rent control on buildings constructed after 1995 as well as on single-family dwellings.

Residential managers also must fully understand their obligations under state and federal fair housing legislation, as well as under the Real Estate Commissioner's Regulations dealing with fair housing. (See Unit 2 for specific requirements.)

Residential managers of lower-priced units should be familiar with Section 8 housing. This is a rental program under which all or part of a low-income tenant's rent

is paid through the county. County administrators must inspect the property for eligibility, and tenants must meet stated criteria and be approved by the county.

Short-term rentals. Individual ownership of condominiums generally involves property management. Firms like Airbnb, Vrbo, and Vacasa enjoyed significant recent growth. While they use the internet for rentals, they hire a great many managers to supervise the condition of the units and work with the owners.

Condominiums. A growing segment in the property management field is **condominium association management**. This type of management is often heavy on the accounting aspects. The duties of the condominium association manager likely would include the following:

- Collecting fees and assessments from members
- Issuing financial statements to the association
- Ensuring that homeowners associations provide members an annual financial statement and the Assessment and Reserve Funding Disclosure Summary form, which spells out current assessments, additional scheduled assessments reserve account balance, and obligations
- Contracting for or hiring for all improvements, maintenance, and repairs
- Enforcing covenants, conditions, and restrictions (CC&Rs)
- Handling tenant interpersonal disputes and/or complaints
- Filing tax returns (if applicable), as well as handling workers' compensation, unemployment compensation, insurance, and so forth
- Seeing that the property is insured as to damage and owner and director liability
- Making suggestions to the board of directors
- Attending directors' meetings

In condominium associations, property managers don't make policy; they merely carry out policy as directed by the board of directors and the covenants, conditions, and restrictions in each deed. A condominium association manager must understand that different board members have different personal agendas. For example, some members may be primarily focused on security, while others are interested in keeping assessments to a minimum. A property manager must avoid becoming involved in the politics of the homeowners association and must focus on the instructions of the board. However, the manager does have a duty to make informed recommendations to the board.

A number of computer programs designed for condominium association management provide financial records, spreadsheets, work orders, and even much of the routine correspondence of the association.

The tenant in a mobile home park is entitled to a 12-month lease on request.

Mobile home parks. Management of a mobile home park is a specialty field involving the following:

- Park development
- Public amenities
- Enforcement of park rules
- Approval of lease assignments on sale of units

In parks where the individual lots are owned by the mobile-unit owners, the mobile home park management duties become similar to the duties of a condominium association manager. However, the park manager should be aware that the laws governing evictions from rental space parks are much more restrictive for park owners than for other residential landlords. The park manager must give tenants a 12-month lease on request at current rent and must furnish tenants with an annual copy of the current California Civil Code covering mobile home parks, so that tenants understand their rights and responsibilities. The management of a mobile home park cannot require a homeowner to use a specific broker when replacing a unit in a rental park.

Multifamily units. Residential property bought for investment is the most common professionally managed property. Statistics indicate that multiple-family units account for approximately 30% of residential housing in the United States.

The more problems a property has, the more it needs professional management. Because properties that have had a troubled history can take a great deal of a property manager's time, the manager's fee scale is generally higher for such properties.

Public housing. Ownership of public housing is important to property management. The largest single landlord in the United States is the collective 3,300 public housing authorities. More than 1.3 million units are controlled by public housing authorities. A great many property managers are employed by federal, state, and local housing authorities.

Traditionally, management of public housing has almost exclusively concentrated on the physical and financial aspects of the projects. Management is beginning to realize the importance of social aspects of public housing management.

Single-family homes. Besides homes purchased for rental, there are many instances requiring single-family home management for absentee owners. In resort areas, many owners use property management to care for their properties and, in some cases, to handle short-term rentals. Property management might also be required for property in probate and for lenders who have foreclosed. Generally, because single-family units require more management time per unit than multifamily units, management charges tend to reflect this greater effort.

Office Buildings

Office buildings are the major commercial property. Office space requirements, as well as available inventory, are directly related to the local economy. The larger

users of office space, such as banks, savings associations, and insurance companies, often build for their own use but also provide a large amount of excess of space for leasing purposes.

Overbuilding of office structures intensified the need for professional management because owners didn't want to give any advantage to other owners: Competition for lessees can be heated.

Many areas of California now have a glut of office space. In such areas, concessions are necessary to attract tenants. In some instances, property managers agree to assume a tenant's current lease to encourage the tenant to take a larger space under a long-term lease. The agent then has the job of marketing the "trade-in" space.

Specialized offices, such as medical or legal offices, have special problems.

Maintenance. Besides merchandising of office space, the manager of an office building must handle maintenance or service problems unique to this type of operation. This job includes such activities as the following:

- Servicing all operating equipment and public facilities, such as lobbies, lights, and washrooms
- Maintaining elevators, which are indispensable in a highrise (usually involves an elevator maintenance contract)
- Cleaning (usually done at night)
- Other routine maintenance, including window cleaning, waste removal, light bulb replacement, heating, ventilation, and air-conditioning
- Preparing and updating a maintenance operations manual that shows a list of all equipment with the vital information concerning each piece of equipment
- Compliance with health and fire codes, as well as the Americans with Disabilities Act.

Protection. Protection of the premises is a management function. It includes such vital items as these:

- Key control
- Alarm systems
- Lighting
- Security guard employment
- Fire-prevention techniques
- Insurance coverage

Retail Space

Management of retail space requires many of the same skills and concerns as office management. In multiunit commercial properties, the manager should consider

the effect a prospective tenant will have on the business of other tenants. Managers will often seek out particular tenants or businesses in order to contribute to the overall operation of the property.

Industrial Management

Industrial management is rather specialized because of the skills required. Industrial managers must have knowledge in many areas, including the following:

- Fire-suppression systems (sprinklers) and water capacity and pressure for various uses
- Floor and ceiling load capacities
- Hazardous and toxic substances (use, storage, and disposal), as well as underground tanks
- Air- and water-quality control
- Loading dock requirements
- Electrical capacity and three-phase wiring
- Reading blueprints for modification
- Specific zoning regarding uses allowed
- Special insurance requirements
- Security and security systems
- Large cooling, heating, and ventilation systems

Industrial managers might manage specific property or an entire industrial park. The industrial property manager's duties primarily relate to renting, but they also involve common area maintenance and protecting the property and the owners from liability.

SECURITY

Security is of prime importance to lessors and lessees for all types of property. It applies to personal security of tenants, employees, and guests as well as security for the lessee's property.

Because no property can be absolutely safe, a property manager should never indicate to tenants that a property is safe or secure. This could be seen by the court as a warranty as to safety. Nevertheless, your best efforts should be used to make the premises as safe as is reasonably possible.

Each property has unique security issues. The property manager should consider an emergency evacuation plan, adequate interior and exterior lighting, use of solid core and fire-resistant doors, type of door and window locks, a security alarm system, and security and protection for all personnel, tenants, equipment, and property records. They should also consider:

- *Antivirus software*
- *Antihacking software (compatible with your antivirus software)*

- *An encryption program for sensitive data*
- *Cloud storage*
- *Removal and safe storage of memory sticks*
- *Hiring a security consultant to review your efforts*

While these methods won't guarantee complete data protections, they will show you acted in a responsible manner to protect data in the event of a lawsuit.

Liability of Manager

Managers have been held liable for failure to comply with health and safety ordinances, as well as for building code violations. If funds are not available for compliance, it would be in the manager's best interest to give up management.

Managing for Out-of-State Owners

Property managers must withhold 7% of gross rents received in excess of \$1,500 per calendar year for the California Franchise Tax Board if the owner resides outside of California (the gross rent received less management fees).

Managing for Foreign Owners

Property managers who remit rent payments to a foreign owner must withhold 30%, unless exempt by tax treaty. Failure to comply can result in manager liability for 30% of gross rent plus penalties and interest.

MANAGEMENT AGREEMENT

It makes no difference whether the property involved is an office building, a residential property, or a shopping center; the responsibilities assumed by the manager are so important that they warrant a written agreement. The **management agreement** formalizes the relationship between the owner and the manager and points out the rights, and duties of each party. The forms used for this purpose may vary, but regardless of the property involved, certain basic points must be included:

Management fees are usually a percentage of the gross, not the net.

- Identification of the parties
- Sufficient identification of the property
- The contract period, including the beginning and the termination dates
- Management's and owner's responsibilities
- Management fees—the amount, when it is to be paid, and the manner of payment
- Provision for management accounting, including records to be kept and reports to be made

Management fees can cover one or a combination of the following:

- Flat fees


- Minimum fee
- Minimum plus percentage of the gross (very common compensation)
- Leasing fee (flat fee or a percentage of the lease rental; generally a higher percentage for the first year and a lower percentage for subsequent years)
- Additional fees or percentages for special services, such as drafting leases, supervising repairs, remodeling, handling evictions, overseeing contracts, and collecting delinquent accounts of former tenants

In addition, management contracts provide for reimbursement of costs, which may or may not include such items as advertising. Generally, the more management problems a property has, the higher the management fee percentage. Larger properties tend to be managed at lower percentages.

Figure 15.1 is the Property Management Agreement Form prepared by the California Association of REALTORS®. This excellent form is self-explanatory.

FIGURE 15.1: Property Management Agreement

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	CALIFORNIA ASSOCIATION OF REALTORS®	PROPERTY MANAGEMENT AGREEMENT (C.A.R. Form PMA, Revised 6/17)
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Date Prepared: _____


_____, ("Owner"), and
_____, ("Broker"), agree as follows:

1. **APPOINTMENT OF BROKER:** Owner hereby appoints and grants Broker (hereinafter "Property Manager") the exclusive right to rent, lease, operate and manage the property(ies) known as _____, and any additional property that may later be added to this Agreement ("Property"), upon the terms below, for the period beginning (date) _____ and ending (date) _____, at 11:59 PM.
 (If checked:) ☐ Either party may terminate this Property Management Agreement ("Agreement") on at least 30 days written notice _____ months after the original commencement date of this Agreement. After the exclusive term expires, this Agreement shall continue as a non-exclusive agreement that either party may terminate by giving at least 30 days written notice to the other.
2. **PROPERTY MANAGER ACCEPTANCE:** Property Manager accepts the appointment and grant, and agrees to:
 - A. Use due diligence in the performance of this Agreement.
 - B. Furnish the services of its firm for the rental, leasing, operation and management of the Property.
3. **AUTHORITY AND POWERS:** Owner grants Property Manager the authority and power, at Owner's expense, to:
 - A. **ADVERTISING:** Display FOR RENT/LEASE and similar signs on the Property. Advertise the availability of the Property, or any part thereof, for rental or lease in the Multiple Listing Service and other online media.
 - B. **RENTAL; LEASING:** Initiate, sign, renew, modify or cancel rental agreements and leases for the Property, or any part thereof; collect and give receipts for rents, other fees, charges and security deposits. Any lease or rental agreement executed by Property Manager for Owner shall not exceed _____ year(s) or ☐ shall be month-to-month. Unless Owner authorizes a lower amount, rent shall be: ☐ at market rate; OR ☐ a minimum of \$ _____ per _____; OR ☐ see attachment.
 - C. **TENANCY TERMINATION:** Sign and serve in Owner's name notices that are required or appropriate; commence and prosecute actions to evict tenants; recover possession of the Property in Owner's name; recover rents and other sums due; and, when expedient, settle, compromise and release claims, actions and suits and/or reinstate tenancies. If Landlord permits Tenant to pay rent by direct deposit such as wire or electronic transfer or other online method, Landlord should discuss with a Landlord-Tenant attorney the implications of doing so in the event Tenant defaults and an eviction becomes necessary.
 - D. **REPAIR; MAINTENANCE:** Make, cause to be made, and/or supervise repairs, improvements, alterations and decorations to the Property; purchase, and pay bills for, services and supplies. Owner agrees that state and local water use restrictions will supersede any obligation by Property Manager or any Tenant to water/maintain gardens, landscaping trees or shrubs. Property Manager shall obtain prior approval of Owner for all expenditures over \$ _____ for any one item. Prior approval shall not be required for monthly or recurring operating charges or, if in Property Manager's opinion, emergency expenditures over the maximum are needed to protect the Property or other property(ies) from damage, prevent injury to persons, avoid suspension of necessary services, avoid penalties or fines, or suspension of services to tenants required by a lease or rental agreement or by law, including, but not limited to, maintaining the Property in a condition fit for human habitation as required by Civil Code §§1941 and 1941.1 and Health and Safety Code §§17920.3 and 17920.10.
 - E. **REPORTS, NOTICES AND SIGNS:** Comply with federal, state or local law requiring delivery of reports or notices and/or posting of signs or notices.
 - F. **CONTRACTS; SERVICES:** Contract, hire, supervise and/or discharge firms and persons, including utilities, required for the operation and maintenance of the Property. Property Manager may perform any of Property Manager's duties through attorneys, agents, employees, or independent contractors and, except for persons working in Property Manager's firm, shall not be responsible for their acts, omissions, defaults, negligence and/or costs of same.
 - G. **EXPENSE PAYMENTS:** Pay expenses and costs for the Property from Owner's funds held by Property Manager, unless otherwise directed by Owner. Expenses and costs may include, but are not limited to, property management compensation, fees and charges, expenses for goods and services, property taxes and other taxes, Owner's Association dues, assessments, loan payments and insurance premiums.
 - H. **SECURITY DEPOSITS:** Receive security deposits from tenants, which deposits shall be ☐ given to Owner, or ☐ placed in Property Manager's trust account and, if held in Property Manager's trust account, pay from Owner's funds all interest on tenants' security deposits if required by local law or ordinance. Owner shall be responsible to tenants for return of security deposits and all interest due on security deposits held by Owner.
 - I. **TRUST FUNDS:** Deposit all receipts collected for Owner, less any sums properly deducted or disbursed, in a financial institution whose deposits are insured by an agency of the United States government. The funds shall be held in a trust account separate from Property Manager's personal accounts. Property Manager shall not be liable in event of bankruptcy or failure of a financial institution.
 - J. **RESERVES:** Maintain a reserve in Property Manager's trust account of \$ _____
 - K. **DISBURSEMENTS:** Disburse Owner's funds held in Property Manager's trust account in the following order:
 - (1) Compensation due Property Manager under paragraph 8.
 - (2) All other operating expenses, costs and disbursements payable from Owner's funds held by Property Manager.
 - (3) Reserves and security deposits held by Property Manager.
 - (4) Balance to Owner.

Owner's Initials (_____) (_____)

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PROPERTY MANAGEMENT AGREEMENT (PMA PAGE 1 OF 4)

FIGURE 15.1: Property Management Agreement (continued)

Owner Name: _____ Date: _____

- L. **OWNER DISTRIBUTION:** Remit funds, if any are available, monthly (or ☐ _____), to Owner.
- M. **OWNER STATEMENTS:** Render monthly (or ☐ Quarterly or ☐ _____), and year-end statements of receipts, expenses and charges for each Property.
- N. **PROPERTY MANAGER FUNDS:** Property Manager shall not advance Property Manager's own funds in connection with the Property or this Agreement.
- O. **KEYSAFE/LOCKBOX:** ☐ (If checked) Owner authorizes the use of a keysafe/lockbox to allow entry into the Property and agrees to sign a keysafe/lockbox addendum (C.A.R., Form KLA).
4. **OWNER RESPONSIBILITIES:** Owner shall:
- Provide all documentation, records and disclosures as required by law or required by Property Manager to manage and operate the Property, and immediately notify Property Manager if Owner becomes aware of any change in such documentation, records or disclosures, or any matter affecting the habitability of the Property.
 - Indemnify, defend and hold harmless Property Manager, and all persons in Property Manager's firm, as permitted by law, from all costs, expenses, suits, liabilities, damages, attorney fees and claims of every type, including but not limited to those arising out of injury or death of any person, or damage to any real or personal property of any person, including Owner, (i) for any repairs performed by Owner or by others hired directly by Owner; (ii) for those acts relating to the management, leasing, rental, security deposits, or operation of the Property by Property Manager, or any person in Property Manager's firm, or the performance or exercise of any of the duties, powers or authorities granted to Property Manager; or (iii) from any incorrect or incomplete information supplied by Owner, or from any material facts that Owner knows but fails to disclose including dangerous or hidden conditions on the Premises.
 - Maintain the Property in a condition fit for human habitation as required by Civil Code §§ 1941 and 1941.1 and Health and Safety Code §§ 17920.3 and 17920.10 and other applicable law.
 - Pay all interest on tenants' security deposits if required by local law or ordinance.
 - Carry and pay for: (i) public and premises liability insurance in an amount of no less than \$1,000,000; and (ii) property damage and worker's compensation insurance adequate to protect the interests of Owner and Property Manager. Property Manager shall be, and Owner authorizes Property Manager to be, named as an additional insured party on Owner's policies.
 - Pay any late charges, penalties and/or interest imposed by lenders or other parties for failure to make payment to those parties, if the failure is due to insufficient funds in Property Manager's trust account available for such payment.
 - Immediately replace any funds required if there are insufficient funds in Property Manager's trust account to cover Owner's responsibilities.
5. **OWNER REPRESENTATIONS:**
- Owner represents that, unless otherwise specified in writing, Owner is unaware of: (i) any recorded Notice of Default affecting the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation, or other pending or threatened action that does or may affect the Property or Owner's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Owner shall promptly notify Property Manager in writing if Owner becomes aware of any of these items during the term of this Agreement.
 - Owner represents that any and all residential rental unit(s) on the Property contain all permits and government approvals needed to lawfully lease or rent any such unit as a dwelling, except: _____.
6. **TAX WITHHOLDING:**
- If Owner is not a California Resident or a corporation or LLC qualified to conduct business in California, Owner authorizes Property Manager to withhold and transmit to California Franchise Tax Board ("FTB") 7% of the GROSS payments to Owner that exceed \$1,500 received by Property Manager, unless Owner completes and transmits to Property Manager FTB form 589, nonresident reduced withholding request, FTB form 588, nonresident withholding waiver, or FTB form 590, withholding exemption certificate.
 - If Owner is a nonresident alien individual, a foreign entity, or other non-U.S. person (Foreign Investor) Owner authorizes Property Manager to withhold and transmit to the Internal Revenue Service (IRS) 30% of the GROSS rental receipts unless Owner elects to treat rental income as "effectively connected income" by submitting to Property Manager a fully completed IRS form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States. A Foreign investor Owner will need to obtain a U.S. tax payer identification number and file a declaration with the IRS regarding effectively connected income in order to complete the form given to Property Manager. Further, the Foreign Investor Owner will be responsible for making any necessary estimated tax payments.
7. **OWNER DISCLOSURE:**
- LEAD-BASED PAINT:**
 - ☐ The Property was constructed on or after January 1, 1978.
 - ☐ The Property was constructed prior to 1978.
 - Owner has no knowledge of lead-based paint or lead-based paint hazards in the housing except: _____
 - Owner has no reports or records pertaining to lead-based paint or lead-based paint hazards in the housing, except the following, which Owner shall provide to Property Manager: _____
 - POOL/SPA DRAIN:** Any pool or spa on the property does (or, ☐ does not) have an approved anti-entrapment drain cover, device or system.
 - ☐ **MOLD:** The Property was treated in _____ (month) _____ (year) for elevated levels of mold which was previously detected in the following location(s): _____
☐ Owner has no reports or records pertaining to elevated levels of mold in the Property, except: _____
☐ Owner has no knowledge of elevated levels of mold currently in the Property, except: _____
 - ☐ **ASBESTOS:** Asbestos was removed from the Property in _____ (month) _____ (year) in the following location(s): _____

Owner's Initials (____)(____)

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PROPERTY MANAGEMENT AGREEMENT (PMA PAGE 2 OF 4)



FIGURE 15.1: Property Management Agreement (continued)

Owner Name: _____ Date: _____

- ☐ Owner has no reports or records pertaining to asbestos in the Property, except: _____.
- ☐ Owner has no knowledge of asbestos currently in the Property, except: _____.

- E. ☐ **PEST CONTROL:** Owner has entered into a contract for periodic pest control treatment of the Property. Owner, within 3 days, will provide Property Manager a copy of the notice originally given to owner by the pest control company.
- F. ☐ **METH CONTAMINATION:** Owner has received an order from a health official prohibiting occupancy of any part of the Property because of methamphetamine contamination. Owner, within 3 days, will provide Property Manager a copy of the order. Contamination specified in the order ☐ has or ☐ has not been remedied.
- G. **BED BUG DISCLOSURE:** Owner acknowledges that beginning July 1, 2017, for new tenants and by January 1, 2018, all tenants must be provided a notice regarding bed bugs (C.A.R. Form BBD). Owner further acknowledges that it is unlawful to show, rent, or lease a property if there is a known current bed bug infestation. ☐ Owner knows of a current infestation.
- H. ☐ **WATER SUBMETERS:** The Property contains two or more units served by a single water meter and Owner has installed a submeter to measure and charge each individual unit for water usage. Effective January 1, 2018, Owner agrees to comply with Civil Code §§ 1954.201 through 1954.219 and authorizes Property Manager to provide the required Water Submeter Addendum (C.A.R. Form WSM).
- I. ☐ **CARBON MONOXIDE DETECTORS:** The Premises has a fossil fuel burning heater, appliance, or an attached garage. Landlord has ☐ has not installed carbon monoxide detector devices in accordance with legal requirements.
- J. ☐ **SMOKE ALARMS:** Landlord has ☐ has not installed smoke alarm(s) in each bedroom, in the hallway outside of each bedroom and on each floor whether or not a bedroom is located on the floor in compliance with legal requirements.
- K. **WATER CONSERVING PLUMBING FIXTURES:** The Premises was built prior to January 1, 1994. The Owner has ☐ has not installed water conserving plumbing fixtures (toilets, shower heads, interior faucets, urinals) as per Civil Code section 1101.1 et seq effective as of 1/1/2017 for single family residential properties and 1/1/2019 for multifamily residential properties.
- L. **WATER HEATERS:** Water heater has ☐ has not been braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motion.
- M. **PROP. 65 WARNING NOTICE:** Landlord has ☐ has not posted a proposition 65 warning notice on the Property.
8. **COMPENSATION:**
- A. Owner agrees to pay Property Manager fees in the amounts indicated below for:
- (1) Management: _____
 - (2) Renting or Leasing: _____
 - (3) Evictions: _____
 - (4) Preparing Property for rental or lease: _____
 - (5) Managing Property during extended periods of vacancy: _____
 - (6) An overhead and service fee added to the cost of all work performed by, or at the direction of, Property Manager: _____
 - (7) Other: _____
- B. This Agreement does not include providing on-site management services, property sales, refinancing, preparing Property for sale or refinancing, modernization, fire or major damage restoration, rehabilitation, obtaining income tax, accounting or legal advice, representation before public agencies, advising on proposed new construction, debt collection, counseling, attending Owner's Association meetings or _____
- If Owner requests Property Manager to perform services not included in this Agreement, a fee shall be agreed upon before these services are performed.
- C. Property Manager may divide compensation, fees and charges due under this Agreement in any manner acceptable to Property Manager.
- D. Owner further agrees that:
- (1) Property Manager may receive and keep fees and charges from tenants for: (i) requesting an assignment of lease or sublease of the Property; (ii) processing credit applications; (iii) any returned checks and/or (☐ if checked) late payments; and (iv) any other services that are not in conflict with this Agreement.
 - (2) Property Manager may perform any of Property Manager's duties, and obtain necessary products and services, through affiliated companies or organizations in which Property Manager may own an interest. Property Manager may receive fees, commissions and/or profits from these affiliated companies or organizations. Property Manager has an ownership interest in the following affiliated companies or organizations: _____
- Property Manager shall disclose to Owner any other such relationships as they occur. Property Manager shall not receive any fees, commissions or profits from unaffiliated companies or organizations in the performance of this Agreement, without prior disclosure to Owner.
- (3) Other: _____
9. **AGENCY RELATIONSHIPS:** Property Manager may act, and Owner hereby consents to Property Manager acting, as dual agent for Owner and tenant(s) in any resulting transaction. If the Property includes residential property with one-to-four dwelling units and this Agreement permits a tenancy in excess of one year, Owner acknowledges receipt of the "Disclosure Regarding Agency Relationships" (C.A.R. Form AD). Owner understands that Property Manager may have or obtain property management agreements on other property, and that potential tenants may consider, make offers on, or lease through Property Manager, property the same as or similar to Owner's Property. Owner consents to Property Manager's representation of other owners' properties before, during and after the expiration of this Agreement.
10. **NOTICES:** Any written notice to Owner or Property Manager required under this Agreement shall be served by sending such notice by first class mail or other agreed-to delivery method to that party at the address below, or at any different address the parties may later designate for this purpose. Notice shall be deemed received three (3) calendar days after deposit into the United States mail OR ☐ _____.

Owner's Initials (____)(____)

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PROPERTY MANAGEMENT AGREEMENT (PMA PAGE 3 OF 4)

FIGURE 15.1: Property Management Agreement (continued)

Owner Name: _____ Date: _____

11. DISPUTE RESOLUTION:

- A. MEDIATION:** Owner and Property Manager agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. **Exclusions from this mediation agreement are specified in paragraph 11B.**
- B. ADDITIONAL MEDIATION TERMS:** The following matters shall be excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation provisions.
- C. ADVISORY:** If Owner and Property Manager desire to resolve disputes arising between them rather than court, they can document their agreement by attaching and signing an Arbitration Agreement (C.A.R. Form ARB).

12. EQUAL HOUSING OPPORTUNITY: The Property is offered in compliance with federal, state and local anti-discrimination laws.

13. ATTORNEY FEES: In any action, proceeding or arbitration between Owner and Property Manager to enforce the compensation provisions of this Agreement, the prevailing Owner or Property Manager shall be entitled to reasonable attorney fees and costs from the non-prevailing Owner or Property Manager, except as provided in paragraph 11A.

14. ADDITIONAL TERMS: ☐ Keysafe/Lockbox Addendum (C.A.R. Form KLA); ☐ Lead-Based Paint and Lead-Based Paint Hazards Disclosure (C.A.R. Form FLD)

15. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed except in writing. This Agreement and any supplement, addendum or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

Owner warrants that Owner is the owner of the Property or has the authority to execute this Agreement. Owner acknowledges Owner has read, understands, accepts and has received a copy of the Agreement.

☐ **REPRESENTATIVE CAPACITY:** This Property Management Agreement is being signed for Owner by an individual acting in a Representative Capacity as specified in the attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-LL). Wherever the signature or initials of the representative identified in the RCSD appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. Owner (i) represents that the entity for which the individual is signing already exists and (ii) shall Deliver to Broker, within 3 Days After Execution of this Agreement, evidence of authority to act (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

Owner _____ Date _____

Owner _____

Print Name _____ Social Security/Tax ID # (for tax reporting purposes) _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ Email _____

Owner _____ Date _____

Owner _____

Print Name _____ Social Security/Tax ID # (for tax reporting purposes) _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ Email _____

Real Estate Broker (Firm) _____ DRE Lic. #: _____

By (Agent) _____ DRE Lic. #: _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ Email _____

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PROPERTY MANAGEMENT AGREEMENT (PMA PAGE 4 OF 4)

ACCOUNTING RECORDS

Although the number of bookkeeping records needed depends on the type of property managed and the volume of business involved, the selection and maintenance of an adequate trust fund accounting system is essential in property management because of the fiduciary nature of the business. The responsibility for trust fund records is placed with the property management broker. The trust fund requirements set forth in Unit 3 are applicable to property managers and must be complied with. It is further recommended that an outside accountant be employed to review and audit the accounting system.

Trust Ledger

Section 2830 of the commissioner's regulations requires that a **trust ledger** for property management accounts be established. As rents come in, they are posted to the owner's account. Also recorded in the trust ledger is the money paid out on behalf of the owner. This includes any repair costs, payments of encumbrances, and payments for utilities or commissions. These expenses are charged against the income of the property, and the manager sends a statement to the owner at the end of each month. Again, trust records today generally are kept using computer software.

IRS Reporting

Any person who receives rental income must provide IRS Form 1099 for all service providers of \$600 or more.

LEASEHOLD ESTATES

One of the responsibilities of a property manager involves leasing the property or acting as a consultant when drawing up the terms of the lease.

A leasehold estate arises when an owner or a property manager acting as the owner's agent grants a tenant the right to occupy the owner's property for a specified period for a consideration. The *lessor* is the owner and the *lessee* is the tenant.

Basic Types of Leasehold Estates

There are four basic types of leasehold estates, based on the length and nature of their duration: the estate for years, the estate from period to period, the estate at sufferance, and the estate at will.

An estate for years has a definite termination date.

Estate for years. An estate that continues for a definite fixed period of time is an **estate for years**. The lease may be for any specified length of time, even for less than a year, measured in days, weeks, or months. Professional property managers will generally insist on an estate for years.

Estate from period to period. An estate from period to period is commonly called a **periodic tenancy**. The lease continues from period to period (either year

to year, month to month, or week to week), as designated. The most common periodic tenancy is month to month.

A periodic tenancy can be ended by a notice for the length of the rent-paying period but for no more than 30 days (60 days for mobile homes). However, if a residential tenant has lived on the premises for at least 12 months, a landlord must provide a 90-day notice to terminate the tenancy.

If a tenant is under a rental agreement with a government agency, in certain Section 8 housing situations, a 90-day notice must be given to terminate.

The lessor can change lease terms on a periodic tenancy by providing a tenant a 30-day written notice; however, if the rent is increased more than 10% during a 12-month period, then a 60-day notice is required.

Estate at sufferance. An **estate at sufferance** is created when a tenant obtains possession of property legally but then remains on the property without the owner's consent, such as a holdover tenant after the expiration of the leasehold interest. A tenant at sufferance would need to be evicted from the property and cannot simply be ejected as a trespasser would. If the lessor accepts rent, the estate then becomes a periodic tenancy based on the rent-paying period.

Estate at will. An **estate at will** has no specified time limit. Possession is given with permission, but no agreement is made as to rent. As an example, possession is given to a prospective tenant before the lease terms are agreed to. In California, such an estate requires a **30-day notice** to terminate.

Types of Leases

The three basic lease forms the property manager will be expected to work with are the gross lease, the net lease, and the percentage lease.

Gross lease. Under a **gross lease**, the tenant pays a fixed rental and the owner pays all other expenses for the property. Most residential leases and small commercial leases on office buildings are gross leases. As an example, the typical month-to-month lease is for a gross amount.

To keep a tenant on a gross lease from holding over at the end of the term, the lease might include a **holdover clause**, which materially raises the rent when the lease period expires. This encourages the tenant to either sign a new lease or vacate the premises.

Net lease means the owner gets a net amount and property expenses are paid by the tenant. Payments are similar to an annuity.

Net lease. Under the terms of a **net lease**, besides a basic rent, building expenses are passed on to the tenant. There are three types of net leases:

- Single net lease—The tenant pays the taxes and the base rent.
- Double net lease—The tenant pays for the insurance, as well as taxes and base rent.
- Triple net lease—In addition to taxes, insurance, and base rent, the tenant is responsible for all property maintenance and repairs.

The term *net lease* is generally used in reference to a triple net lease.

Net leases are generally long-term leases and often are found in sale-leasebacks and where buildings are constructed for a particular tenant. The buyer (investor) wants a stated return. To keep the same relative purchasing power, the lessor on a net lease generally wants the net amount tied to an inflationary index, such as the Consumer Price Index.

Percentage lease. A **percentage lease** generally provides for a stated percentage of the gross receipts of a business to be paid as rent. Generally, the percentage lease is tied in with a minimum rent and a covenant to remain in business. The percentage lease also might include hours of operation and a prohibition against the lessee’s conducting offsite “warehouse” sales.

Percentage leases are typically used in shopping centers, where each business aids other businesses. Shopping center leases may have a requirement that a separate percentage of the gross be used for cooperative advertising in newspaper supplements or on radio or TV.

In addition, a percentage lease may include a **recapture clause**, which provides that should a tenant not obtain a desired gross, then the lessor has the right to terminate the lease.

Leases may combine features; for example, a basic gross lease plus a percentage of the gross. What can be done with leases is limited only by the imagination of the parties.

Figure 15.2 shows typical percentages charged for different businesses having percentage leases. In determining the percentage of gross sales that must be paid by the lessee, the greater the tenant’s markup, the higher the percentage on the lease (e.g., 50% on a parking lot rental and 2% on a supermarket rental). Percentages will vary based on vacancy factors, alternative locations, quality of goods sold, traffic count, et cetera.

FIGURE 15.2: Typical Lease Percentages Charged

Type of Business	Percentage of Gross Sales
Liquor stores	1.5–5
Card and gift	3–6
Drugstores	2.5–4
Jewelry	7 and up
Pet stores	5–8
Restaurants	4–7
Grocer and supermarkets	1–2

Various professional associations publish average percentages currently being charged for different types of businesses. Lessors, of course, want the maximum percentage possible that will still allow the business to remain a viable entity. Typically, a percentage lease will include an audit provision that allows a landlord

the ability to periodically audit the books of a tenant to determine whether they are reporting all their income to the landlord.

Step-up lease. A **step-up lease** has a fixed rent like a gross lease, but it provides for increases at set periods. Increases may be predetermined or according to a definite formula. For example, a 10-year lease at \$2,000 per month could provide for a \$100 monthly increase in rent every two years, so that the rent would be \$2,400 for the last two years of the lease. As an alternative, the lease could provide that the rent increase would be made annually based on the percentage increase in the consumer price index.

RESIDENTIAL LEASING

Most rentals are residential, and most property managers are primarily involved in residential leases. The property manager has a duty to the owner to use care in the selection of tenants. The most important decision any property manager makes is, *Who do I rent to?* A tenant who has no desire to pay rent or is destructive, or both, is worse than having no tenant at all. As protection, property managers should not allow occupancy to a prospective tenant until that person is cleared as being a desirable tenant for the property and the deposit and rent checks have cleared.

Section 8 Housing

Section 8 housing is a 100% federally funded rental subsidy program for low-income households living in privately owned rental units. While there are various programs under Section 8, the main program involves a voucher. The tenant pays a portion of the rent—usually 30% of adjusted income—and the remainder is paid using the voucher by the federal government. Because of financial limitations, there is a waiting list for Section 8 housing.

Rental Application

Figure 15.3 is an Application to Rent by RPI — Realty Publications, Inc. You can see that the application requires personal information, as well as financial data and employment information.

Many lessors also require a copy of the prospective lessee's last pay stub, which serves to verify income. As a minimum, the lessor should verify the present employment and length of employment with the present employer, as well as check with present or prior landlords regarding any problems they may have had. Keep in mind that you must similarly check all tenants, or you could be in violation of one or more of the fair housing laws.

It is also a good practice to see and make a copy of the prospective tenant's driver's license. This will show you that the applicant is who he claims to be, as well as provide you with a previous address. A landlord cannot discriminate based on the rental applicant's source of income (e.g., government subsidies) or because of military status.

Although the civil rights law prohibits discrimination for reasons of race, sex, age, national origin, and so forth (Unit 2), there are valid reasons for discrimination. You can discriminate against a tenant who has had problems with other tenants at a previous rental, was late in making payments, broke rules, damaged the property, left owing rent, or generally has had a poor work or credit history. You don't have to accept a problem tenant. It is a lot easier to refuse a rental than it is to rectify a mistake once it is made.

Lease Provisions


A landlord may charge a nonrefundable screening fee.

You are allowed to charge a nonrefundable screening fee of up to a certain maximum amount. The maximum fee is adjusted each year based on changes in the Consumer Price Index since January 1, 1998, when the fee was \$35. The change is indexed for inflation. (The fee is adjusted annually to reflect the cost of living index.) In 2022, the fee was set at \$52.46. This fee is to cover the costs of obtaining and gathering information to make an acceptance or rejection decision regarding a tenant.

Civil Code Section 2924.85, requires rental applicants be given notice that an owner has received a notice of default and that there is a pending foreclosure.

Even though you are renting on a month-to-month basis, you should nevertheless use a written rental agreement that clearly sets forth lessor and lessee duties and obligations. If you have apartment rules or regulations, they should be attached to the lease or rental agreement and signed by the tenant.

FIGURE 15.3: Application to Rent

	<h2 style="margin: 0;">APPLICATION TO RENT</h2>
<div style="display: flex; justify-content: space-between;"> <div> Prepared by: Agent _____ Broker _____ </div> <div> Phone _____ Email _____ </div> </div>	
<p>NOTE: This form is used by a leasing agent, property manager or landlord when an individual prospective tenant applies to rent a property and they are screened for creditworthiness and qualification for payment of rent, to obtain financial, employment and personal information on the tenant and authorize the landlord to obtain a credit report.</p>	
<p>DATE: _____, 20_____, at _____, California.</p> <p>THIS CREDIT APPLICATION is for payment of monthly rent in the amount of \$_____.</p>	
<p>Property address: _____</p> <p>Received from Applicant(s) \$_____, <input type="checkbox"/> cash, or <input type="checkbox"/> check, for a consumer credit report which is a non-refundable cost and not a deposit.</p> <p>Received from Applicant(s) \$_____, <input type="checkbox"/> cash, or <input type="checkbox"/> check, as a deposit toward the first month's rent on Landlord's acceptance of the applicant's creditworthiness.</p>	
<p>Applicant(s):</p> <p>Applicant One _____ Date of Birth ____ / ____ / ____</p> <p style="text-align: center;">(Name)</p> <p>Social Sec. # _____ Drivers Lic. # _____ State _____</p> <p>Phone _____ Cell _____ Email _____</p> <p>Applicant Two _____ Date of Birth ____ / ____ / ____</p> <p style="text-align: center;">(Name)</p> <p>Social Sec. # _____ Drivers Lic. # _____ State _____</p> <p>Phone _____ Cell _____ Email _____</p>	
<p>Additional Occupant(s): Name _____</p> <p style="text-align: center;">Name _____</p>	
<p>Rental History: Have you ever been party to an eviction? <input type="checkbox"/> Yes <input type="checkbox"/> No Filed bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>Present Address _____</p> <p>City _____ Zip _____</p> <p>Length of Residency _____ Monthly Rent \$_____</p> <p>Landlord/Agent _____ CalBRE #: _____</p> <p>Address _____</p> <p>Phone _____ Cell _____ Email _____</p> <p>Reason for Moving _____ Moving Date ____ / ____ / ____</p>	
<p>Previous Address _____</p> <p>City _____ Zip _____</p> <p>Length of Residency _____ Monthly Rent \$_____</p> <p>Landlord/Agent _____ CalBRE #: _____</p> <p>Address _____</p> <p>Phone _____ Cell _____ Email _____</p>	
<p>Employment:</p> <p>Applicant One</p> <p>Employer _____</p> <p>Address _____</p> <p>Phone _____ Cell _____ Email _____</p> <p>Length of Employment _____ Position _____ Wages _____</p> <p>Pay Period _____ Union _____</p> <p>Previous Employer _____</p> <p>Address _____</p> <p>Phone _____ Cell _____ Email _____</p> <p>Applicant Two</p> <p>Employer _____</p> <p>Address _____</p>	

----- PAGE 1 OF 2 — FORM 553 -----

FIGURE 15.3: Application to Rent (continued)

----- PAGE 2 OF 2 — FORM 553 -----

Phone _____ Cell _____ Email _____
 Length of Employment _____ Position _____ Wages _____
 Pay Period _____ Union _____
 Previous Employer _____
 Address _____
 Phone _____ Cell _____ Email _____
 Additional Income Amount \$ _____ Source _____
 Recipient _____

General Credit Information:

Automobile One: Make _____
 Year _____ Model _____ Lic. #/State _____
 Lender _____

Automobile Two: Make _____
 Year _____ Model _____ Lic. #/State _____
 Lender _____

Bank/branch _____
 Check acc. # _____ Savings Acc. # _____
 Bank/branch _____
 Check acc. # _____ Savings Acc. # _____

Credit References:

1. _____
 Address _____
 Account # _____ Balance due \$ _____ Phone _____

2. _____
 Address _____
 Account # _____ Balance due \$ _____ Phone _____

Personal Reference _____
 Address _____
 Phone _____ Cell _____ Email _____

Personal Reference _____
 Address _____
 Phone _____ Cell _____ Email _____

Nearest relative (name/relationship) _____
 Address _____
 Phone _____ Cell _____ Email _____

Emergency Contact (name/relationship) _____
 Address _____
 Phone _____ Cell _____ Email _____

I/We declare all information given in this application is true and correct. I/We authorize your credit reporting agency to obtain and verify a complete consumer report and supply the information obtained to you. This information is not privileged.

Date: _____, 20_____
 Name: _____

Signature: _____
 (Applicant 1)

Name: _____

Signature: _____
 (Applicant 2)

I acknowledge receipt of this credit application and accompanying payment.

Landlord: _____

Signature: _____

Phone: _____

Email: _____

Don't try to draft a lease or use sections from a number of leases for a "cut and paste" lease. You could be personally liable for errors or omissions, and it also could be considered the unauthorized practice of law. If a simple form lease, such as the short term Residential Lease Agreement published by RPI—Realty, (Figure 15.4), is not appropriate, consult an attorney. You will note that the lease form provides for some of the disclosures covered in Unit 3. When the appropriate block is checked, this form can be used for a month-to-month rental or a lease with a definite termination date.

If a lease is negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean, the lease (as well as other contracts) must include a translation in the language in which it was negotiated.

Name of parties. Any lease should include the full names of all parties. If any person is younger than 18, you ordinarily would need a cosigner unless the underage party qualifies as an emancipated minor by reason of marriage, is an active military service member, or has been declared emancipated by a court. In signing the lease, the parties should sign "jointly and severally," so it is clear that each signer is liable for the entire rent and you can go to one or to all tenants for the rent.

Description of premises. The premises should be described in such a manner that there is no ambiguity. If a parking space or a garage is included, it should be specified.


Dates. An estate for years must have a beginning date and an ending date. A periodic tenancy would have a beginning date and length of period.

Rent and late charge. The rent amount or rental formula should be clearly stated, as well as where and when the rent is due. Landlords may not require rent payments be made in cash unless the tenant has previously attempted to pay rent with a check drawn on insufficient funds or has instructed a bank to stop payment on a rent check. Consider late charges for late payments. Keep in mind that if the late charge is too high, a court could determine it to be a penalty and declare it unenforceable.

Pets. Pet agreements are common in residential leases. Lessors may require an additional deposit and also charge additional rent or limit the size and type of pet allowed. Pet deposits are refundable except for damage amounts. All security deposits cannot exceed California limits of two months' rent. No deposit can be charged for Seeing Eye dogs or support animals. Under the California Fair Employment and Housing Act, a landlord is required to allow an emotional support animal to live with their owner and they cannot evict or restrict a rental because of an emotional support animal.

Water beds. Common water-bed agreements require the tenant to have a liner on any water bed and to pay for a policy of water-bed insurance, should the water bed cause damage to the premises.

FIGURE 15.4: Residential Lease Agreement

	RESIDENTIAL LEASE AGREEMENT
<div style="display: flex; justify-content: space-between;"> Prepared by: Agent _____ Broker _____ Phone _____ Email _____ </div>	
<p>NOTE: This form is used by a leasing agent, property manager or landlord when leasing a residential property on a fixed rental-rate basis for a specific period of time to grant the tenancy and set the amount of rents to be paid, identify who will provide and pay for utilities, and the allocation of maintenance responsibilities and their costs between the landlord and tenant.</p>	
<p>DATE: _____, 20____, at _____, California. <i>Items left blank or unchecked are not applicable.</i></p>	
<p>FACTS:</p> <p>1. This lease agreement is entered into by _____, as the Landlord, and _____, as the Tenant(s), 1.1 regarding residential real estate referred to as _____, 1.2 including the following: <input type="checkbox"/> Garage/parking space # _____ <input type="checkbox"/> Storage space # _____ <input type="checkbox"/> Furnishings _____ 1.3 The following checked attachments are part of this agreement: <input type="checkbox"/> Rent control disclosures <input type="checkbox"/> Option to Renew/Extend Lease [See RPI Form 565] <input type="checkbox"/> House/Building rules <input type="checkbox"/> Lead-Based Paint Disclosure [See RPI Form 557] <input type="checkbox"/> Brokerage Fee Addendum [See RPI Form 273] <input type="checkbox"/> Credit Application [See RPI Form 553] <input type="checkbox"/> Condition of Premises Addendum [See RPI Form 560] <input type="checkbox"/> Condition/Inventory of Furnishings Addendum [See RPI Form 561] <input type="checkbox"/> _____</p>	
<p>AGREEMENT:</p> <p>2. DEPOSIT:</p> <p>2.1 Landlord acknowledges receipt of \$_____ as a security deposit.</p> <p>2.2 The deposit is security for the diligent performance of Tenant's obligations, including payment of rent, repair of damages, reasonable repair and cleaning of premises on termination, and any loss, damages or excess wear and tear on furnishings provided to Tenant.</p> <p>2.3 No interest will be paid on the deposit and Landlord may place the deposit with their own funds, except where controlled by law.</p> <p>2.4 Within 21 days after Tenant vacates, Landlord to furnish Tenant with a security deposit statement itemizing any deductions, with a refund of the remaining amount.</p> <p>3. TERM OF LEASE:</p> <p>3.1 This lease will begin on _____, 20____, and continue until _____, 20____.</p> <p>3.2 The lease terminates on the last day of the term without further notice.</p> <p>3.3 Landlord's acceptance of rent after expiration of the lease term creates a month-to-month tenancy.</p> <p>3.4 If Tenant holds over, Tenant to be liable for rent at the daily rate of \$_____.</p> <p>4. RENT:</p> <p>4.1 Tenant to pay, in advance, \$_____ rent monthly, on the _____ day of each month.</p> <p>4.2 Rent to be paid by:</p> <p style="margin-left: 20px;">a. <input type="checkbox"/> cash, <input type="checkbox"/> check, or <input type="checkbox"/> cashier's check, made payable to Landlord or his agent and delivered to:</p> <p style="margin-left: 40px;">(Name) _____</p> <p style="margin-left: 40px;">(Address) _____</p> <p style="margin-left: 40px;">_____</p> <p style="margin-left: 40px;">(Phone/Email) _____</p> <p style="margin-left: 40px;">Personal delivery of rent to be accepted at Landlord's address during the hours of _____ to _____ of the following days: _____.</p>	

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FIGURE 15.4: Residential Lease Agreement (continued)

----- PAGE 2 OF 4 --- FORM 550 -----

b. ☐ credit card # _____ / _____ / _____ issued by _____,
which Landlord is authorized to charge each month for rent due.

c. ☐ deposit into account number _____ at
(Financial Institution) _____
(Address) _____

d. ☐ _____.

4.3 Tenant to pay a charge of ☐ \$ _____, or ☐ _____% of the delinquent rent payment, as an additional amount of rent, due on demand, in the event rent is not received within ☐ five days, or ☐ _____, after the due date.

4.4 If any rent or other amount due Landlord is not received within five days after its due date, interest will thereafter accrue on the amount at 18% per annum until paid. On receipt of any past due amount, Landlord to promptly make a written demand for payment of the accrued interest which will be payable within 30 days of the demand.

4.5 Tenant to pay a charge of \$ _____ as an additional amount of rent, due on demand, for each rent check returned for insufficient funds or stop payment, in which event Tenant to pay rent when due for each of the three following months by cash or cashier's check.

5. POSSESSION:

5.1 Tenant will not be liable for any rent until the date possession is delivered.

5.2 If Landlord is unable to deliver possession, Landlord will not be liable for any damage, nor will this lease terminate.

5.3 Tenant may terminate this lease if Landlord fails to deliver possession within five days of commencement.

5.4 Only the above-named Tenant(s) are to occupy the premises along with the following individuals:

_____.

5.5 Tenant will not assign this lease agreement or sublet, or have boarders or lodgers.

5.6 Tenant(s) will have no more than _____ guests staying the greater of no more than 10 consecutive days or 20 days in a year.

5.7 Tenant agrees the premises, fixtures, appliances, furnishings and smoke and carbon monoxide detectors are in satisfactory and sanitary condition, except as noted in an addendum. [See RPI Form 561]

5.8 Landlord to make any necessary repairs as soon as possible after notification by Tenant. If Landlord does not timely make necessary repairs, Tenant may have the repairs made and deduct the cost, not to exceed one month's rent.

6. TENANT AGREES:

6.1 To comply with all building rules and regulations and later amendments or modifications.

6.2 To pay for the following utilities and services: _____

_____.

a. Landlord to provide and pay for: _____.

6.3 To keep the premises clean, well ventilated, free of mold contaminating moisture buildup and sanitary.

a. Tenant to promptly notify Landlord of unabated moisture buildup in the premises for prevention of mold contamination.

b. Tenant to properly dispose of all garbage and waste.

6.4 To routinely check and properly maintain smoke and carbon monoxide detectors.

6.5 To properly operate all electrical, gas and plumbing fixtures and pipes, and keep them clean and sanitary.

6.6 ☐ Yard maintenance included in Tenant obligations.

6.7 To make the premises available on 24 hours' notice for entry by Landlord to make necessary repairs, alterations or services, or to exhibit the premises to prospective purchasers, tenants, employees or contractors.

a. In case of emergency or Tenant's abandonment of premises, Landlord may enter the premises at any time.

6.8 Not to disturb, annoy, endanger or interfere with other occupants of the building or neighboring buildings.

6.9 Not to use the premises for any unlawful purpose, violate any government ordinance, or create a nuisance.

6.10 Not to destroy, damage or remove any part of the premises, equipment or fixtures or commit waste, or permit any person to do so.

6.11 Not to keep pets or a waterbed on the premises without Landlord's written consent.

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FIGURE 15.4: Residential Lease Agreement (continued)

----- PAGE 3 OF 4 — FORM 550 -----

a. See attached ☐ Pet Addendum [See **RPI** Form 563], ☐ Waterbed Addendum. [See **RPI** Form 564]

6.12 Not to make any repairs, alterations or additions to the premises without Landlord's written consent.

a. Any repairs or alterations become part of the premises.

6.13 Not to change or add a lock without written consent.

6.14 Smoking is prohibited in the following area(s) _____

7. GENERAL PROVISIONS:

7.1 Tenant agrees to indemnify and hold Landlord harmless from claims, demands, damages or liability arising out of the premises caused by or permitted by Tenant, Tenant's family, agents, employees and guests.

a. ☐ Tenant to obtain insurance for this purpose naming Landlord as an additional insured.

7.2 If the property contains an exercise or recreation facility, Tenant agrees to indemnify and hold Landlord harmless from claims, demands, damages or liability arising from Tenant's use of the facility.

7.3 Landlord to maintain the premises and common areas in a safe and sanitary condition and comply with all applicable ordinances and regulations.

7.4 Waiver of a breach of any provision does not constitute a waiver of any subsequent breach. Landlord's receipt of rent with knowledge of Tenant's breach does not waive Landlord's right to enforce the breached provision.

7.5 In any action to enforce this agreement, the prevailing party will receive attorney fees.

7.6 Notice: Pursuant to Calif. Penal Code §290.46, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP code in which he or she resides.

7.7 Notice: ☐ Landlord has actual knowledge the property is located in a special flood hazard area or an area of potential flooding. Tenant may obtain information about flood and other hazards at <http://myhazards.caloes.ca.gov/>. Landlord's insurance does not cover Tenant's possessions. Tenant may purchase renter's insurance and flood insurance to insure their possessions from loss. Landlord is not required to provide additional information about flood hazards beyond this notice.

7.8 ☐ See attached addendum for additional terms and conditions. [See **RPI** Form 250]

7.9 If lease exceeds one year, Tenant and Landlord acknowledge receipt of the Agency Law Disclosure. [See **RPI** Form 550-2]

7.10 ☐ Landlord may terminate this lease agreement if they, their spouse, domestic partner, children, grandchildren, parents or grandparents, unilaterally decide to occupy the residential property.

8. DESTRUCTION:

8.1 If the premises are totally or partially destroyed and uninhabitable, either Landlord or Tenant may terminate the lease upon written notice.

a. If the lease is not terminated, Landlord will repair the premises and rent will be prorated based on a 30-day month for the period the premises was uninhabitable.

9. TEMPORARY DISPLACEMENT:

9.1 Tenant agrees to temporarily vacate the premises on Landlord's written demand to allow for invasive repairs or fumigation of the premises which will render the premises uninhabitable, subject to local rent control law. [See **RPI** Form 588]

a. Tenant to comply with instructions provided by Landlord to accommodate the work needed.

b. Tenant to receive rent credit equal to the per diem rent for the duration of the displacement.

c. Landlord to provide written notice to Tenant prior to _____ days before the date of displacement.

10. JUST CAUSE AND RENT CAP NOTICE:

California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more or at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to terminate a tenancy. See Section 1946.2 of the Civil Code for more information.

10.1 ☐ This property is not subject to the rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12 (c)(5); (d)(5) and 1946.2 (e)(7); (e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.

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FIGURE 15.4: Residential Lease Agreement (continued)

----- PAGE 4 OF 4 — FORM 550 -----

11. _____

<p>I agree to let on the terms stated above.</p> <p>Date: _____, 20____</p> <p>Landlord: _____</p> <p>Signature: _____</p> <p>Landlord's Broker: _____</p> <p>Broker's DRE #: _____</p> <p>is the broker for: <input type="checkbox"/> Landlord <input type="checkbox"/> both Tenant and Landlord (dual agent)</p> <p>Landlord's Agent: _____</p> <p>Agent's DRE #: _____</p> <p>is <input type="checkbox"/> Landlord's agent (salesperson or broker-associate) <input type="checkbox"/> both Tenant's and Landlord's agent (dual agent)</p> <p>Signature: _____</p> <p>Address: _____</p> <p>Phone: _____ Cell: _____</p> <p>Email: _____</p>	<p>I agree to occupy on the terms stated above.</p> <p>Date: _____, 20____</p> <p>Tenant: _____</p> <p>Signature: _____</p> <p>Tenant: _____</p> <p>Signature: _____</p> <p>Tenant's Broker: _____</p> <p>Broker's DRE #: _____</p> <p>is the broker for: <input type="checkbox"/> Tenant <input type="checkbox"/> both Tenant and Landlord (dual agent)</p> <p>Tenant's Agent: _____</p> <p>Agent's DRE #: _____</p> <p>is <input type="checkbox"/> Tenant's agent (salesperson or broker-associate) <input type="checkbox"/> both Tenant's and Landlord's agent (dual agent)</p> <p>Signature: _____</p> <p>Address: _____</p> <p>Phone: _____ Cell: _____</p> <p>Email: _____</p>
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Inspection. Some leases provide for pre-tenancy walk-through inspections. Deficiencies should be noted on a form provided for this purpose, which should be signed by tenant and landlord. (See Figure 15.5.)

Nonrefundable tenant deposits are forbidden.

Cleaning and security deposits. A controversial item in leases and rental agreements is the **security deposit**. The security deposit functions as a form of insurance for the landlord in case the rental premises are left damaged or dirty or rent is owed. According to the law, the amount of the security deposit that may be demanded or received is limited to an amount equal to two months' rent, in the case of unfurnished residential property, and to three months' rent for furnished residential property. Security deposits for service members are limited to one month's rent for unfurnished and two months' rent for furnished. Nonrefundable deposits, such as *cleaning deposits*, are not allowed.

Landlords must notify a departing tenant of the tenant's right to be present at a pre-vacancy inspection of the tenant's rental unit. The purpose is to allow the tenant to correct any deficiencies noted.

At the termination of the tenancy, the landlord is permitted to retain only that portion of the security deposit reasonably necessary to remedy tenant defaults. The landlord must notify the lessee in writing as to the retention of any portion of the security deposit unless the expenses were less than \$125. Copies of receipts for labor and material must be included for amounts deductible from the security deposit. If the landlord must return any portion of the deposit to the tenant, it must be returned within three weeks after tenancy is terminated (60 days for nonresidential tenants). The bad-faith failure to return the security deposit will subject the landlord to actual damages plus a penalty of up to two times the amount of the security deposit. If the landlord defaults on this obligation, the tenant may initiate legal action through an attorney or small-claims court or file a complaint with the Consumer Protection Bureau.

Lease-option arrangement. With a lease-option, usually used when loans are not easily available or the lessor lacks the required down payment, the purchaser leases the property desired with an option to purchase at a later date. A portion of the amount paid as rent usually will be applied against the purchase price. (Options also can be for lease extensions.)

Exculpatory clauses are invalid for residential leases.

Exculpatory clause (hold-harmless clause). Leases frequently contain an **exculpatory clause**, whereby the tenant agrees to relieve the landlord from all liability for injury or property damage resulting from the condition of the property or the negligence of the owner. Many residential leases contain these clauses, but the clauses are invalid for residential leases. Even though the tenant has agreed, the tenant has not given up her rights under the law.

FIGURE 15.5: Condition of Premises Addendum

<u>CONDITION OF PREMISES ADDENDUM</u>																							
<p>NOTE: This form is used by a property manager or landlord when conducting a pre-occupancy inspection with a residential tenant on entering into a rental or lease agreement, to document the condition of the premises and state the landlord's obligation to make any promised repairs.</p>																							
<p>DATE: _____, 20_____, at _____, California. <i>Items left blank or unchecked are not applicable.</i></p>																							
<p>FACTS:</p> <p>1. This is an addendum to the following agreement:</p> <p style="margin-left: 20px;"> <input type="checkbox"/> Lease agreement [See RPI Form 550] <input type="checkbox"/> Rental agreement [See RPI Form 551] <input type="checkbox"/> Occupancy agreement [See RPI Form 593] </p> <p>1.1 <input type="checkbox"/> of same date, or dated _____, 20_____, at _____, California,</p> <p>1.2 entered into by _____, as the Landlord,</p> <p>1.3 and _____, as the Tenant,</p> <p>1.4 regarding real estate referred to as _____.</p>																							
<p>AGREEMENT:</p> <p>2. Landlord and Tenant have jointly inspected the premises and common areas and agree the premises and unchecked items such as fixtures, appliances and furnishings are in a satisfactory and sanitary condition.</p> <p>3. Check only those items which are unsatisfactory and state why in "REMARKS."</p>																							
<p>4. EXTERIOR/Common Areas:</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Garage/parking lot</td> <td><input type="checkbox"/> Garbage facilities</td> <td><input type="checkbox"/> Storage area</td> <td><input type="checkbox"/> TV antenna</td> </tr> <tr> <td><input type="checkbox"/> Pool/spa</td> <td><input type="checkbox"/> Satellite dish</td> <td><input type="checkbox"/> Patio/decks</td> <td><input type="checkbox"/> CATV hookup</td> </tr> <tr> <td><input type="checkbox"/> Stairs/railings</td> <td><input type="checkbox"/> Garage door opener(s)</td> <td><input type="checkbox"/> Hallway/lobby</td> <td><input type="checkbox"/> Laundry area</td> </tr> <tr> <td><input type="checkbox"/> Fencing</td> <td><input type="checkbox"/> Roof</td> <td><input type="checkbox"/> Exterior lighting</td> <td><input type="checkbox"/> Eaves/gutters</td> </tr> <tr> <td><input type="checkbox"/> Sprinklers/hose</td> <td><input type="checkbox"/> Mailbox</td> <td><input type="checkbox"/> Walkways</td> <td><input type="checkbox"/> _____</td> </tr> </table>				<input type="checkbox"/> Garage/parking lot	<input type="checkbox"/> Garbage facilities	<input type="checkbox"/> Storage area	<input type="checkbox"/> TV antenna	<input type="checkbox"/> Pool/spa	<input type="checkbox"/> Satellite dish	<input type="checkbox"/> Patio/decks	<input type="checkbox"/> CATV hookup	<input type="checkbox"/> Stairs/railings	<input type="checkbox"/> Garage door opener(s)	<input type="checkbox"/> Hallway/lobby	<input type="checkbox"/> Laundry area	<input type="checkbox"/> Fencing	<input type="checkbox"/> Roof	<input type="checkbox"/> Exterior lighting	<input type="checkbox"/> Eaves/gutters	<input type="checkbox"/> Sprinklers/hose	<input type="checkbox"/> Mailbox	<input type="checkbox"/> Walkways	<input type="checkbox"/> _____
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<input type="checkbox"/> Sprinklers/hose	<input type="checkbox"/> Mailbox	<input type="checkbox"/> Walkways	<input type="checkbox"/> _____																				
<p>5. ENTRY:</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Door</td> <td><input type="checkbox"/> # of keys _____</td> <td><input type="checkbox"/> Doorbell/knocker</td> <td><input type="checkbox"/> Closet</td> </tr> <tr> <td><input type="checkbox"/> Intercom/security</td> <td><input type="checkbox"/> Shelves</td> <td><input type="checkbox"/> Locks</td> <td><input type="checkbox"/> _____</td> </tr> </table>				<input type="checkbox"/> Door	<input type="checkbox"/> # of keys _____	<input type="checkbox"/> Doorbell/knocker	<input type="checkbox"/> Closet	<input type="checkbox"/> Intercom/security	<input type="checkbox"/> Shelves	<input type="checkbox"/> Locks	<input type="checkbox"/> _____												
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<p>6. KITCHEN:</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Range</td> <td><input type="checkbox"/> Trash compactor</td> <td><input type="checkbox"/> Oven</td> <td><input type="checkbox"/> Water purifier</td> </tr> <tr> <td><input type="checkbox"/> Refrigerator</td> <td><input type="checkbox"/> Counters/laminate</td> <td><input type="checkbox"/> Garbage disposal</td> <td><input type="checkbox"/> Cabinets/drawers</td> </tr> <tr> <td><input type="checkbox"/> Exhaust fan(s)</td> <td><input type="checkbox"/> Pantry/shelves</td> <td><input type="checkbox"/> Dishwasher</td> <td><input type="checkbox"/> Tile/linoleum</td> </tr> <tr> <td><input type="checkbox"/> Microwave</td> <td><input type="checkbox"/> Sink/faucets</td> <td></td> <td></td> </tr> </table>				<input type="checkbox"/> Range	<input type="checkbox"/> Trash compactor	<input type="checkbox"/> Oven	<input type="checkbox"/> Water purifier	<input type="checkbox"/> Refrigerator	<input type="checkbox"/> Counters/laminate	<input type="checkbox"/> Garbage disposal	<input type="checkbox"/> Cabinets/drawers	<input type="checkbox"/> Exhaust fan(s)	<input type="checkbox"/> Pantry/shelves	<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Tile/linoleum	<input type="checkbox"/> Microwave	<input type="checkbox"/> Sink/faucets						
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<input type="checkbox"/> Microwave	<input type="checkbox"/> Sink/faucets																						
<p>7. BATHROOM:</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Sink</td> <td><input type="checkbox"/> Tile/linoleum</td> <td><input type="checkbox"/> Faucets/hardware</td> <td><input type="checkbox"/> Closets/shelves</td> </tr> <tr> <td><input type="checkbox"/> Toilet</td> <td><input type="checkbox"/> Exhaust fan(s)</td> <td><input type="checkbox"/> Shower</td> <td><input type="checkbox"/> Shower enclosure</td> </tr> <tr> <td><input type="checkbox"/> Tub</td> <td><input type="checkbox"/> Medicine cabinet</td> <td></td> <td></td> </tr> </table>				<input type="checkbox"/> Sink	<input type="checkbox"/> Tile/linoleum	<input type="checkbox"/> Faucets/hardware	<input type="checkbox"/> Closets/shelves	<input type="checkbox"/> Toilet	<input type="checkbox"/> Exhaust fan(s)	<input type="checkbox"/> Shower	<input type="checkbox"/> Shower enclosure	<input type="checkbox"/> Tub	<input type="checkbox"/> Medicine cabinet										
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<input type="checkbox"/> Tub	<input type="checkbox"/> Medicine cabinet																						
<p>8. ELECTRICAL:</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Outlets</td> <td><input type="checkbox"/> Lighting</td> <td><input type="checkbox"/> Switchplates</td> <td><input type="checkbox"/> Thermostat</td> </tr> <tr> <td><input type="checkbox"/> Fixtures</td> <td><input type="checkbox"/> Furnace</td> <td><input type="checkbox"/> Smoke detectors</td> <td><input type="checkbox"/> Ventilation</td> </tr> <tr> <td><input type="checkbox"/> Air conditioning</td> <td><input type="checkbox"/> _____</td> <td></td> <td></td> </tr> </table>				<input type="checkbox"/> Outlets	<input type="checkbox"/> Lighting	<input type="checkbox"/> Switchplates	<input type="checkbox"/> Thermostat	<input type="checkbox"/> Fixtures	<input type="checkbox"/> Furnace	<input type="checkbox"/> Smoke detectors	<input type="checkbox"/> Ventilation	<input type="checkbox"/> Air conditioning	<input type="checkbox"/> _____										
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<input type="checkbox"/> Air conditioning	<input type="checkbox"/> _____																						
<p>9. PLUMBING:</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Water heater</td> <td><input type="checkbox"/> Washer</td> <td><input type="checkbox"/> Hot/cold water</td> <td><input type="checkbox"/> Dryer</td> </tr> <tr> <td><input type="checkbox"/> Gas hookups</td> <td><input type="checkbox"/> _____</td> <td></td> <td></td> </tr> </table>				<input type="checkbox"/> Water heater	<input type="checkbox"/> Washer	<input type="checkbox"/> Hot/cold water	<input type="checkbox"/> Dryer	<input type="checkbox"/> Gas hookups	<input type="checkbox"/> _____														
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----- PAGE 1 OF 2 — FORM 560 -----

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FIGURE 15.5: Condition of Premises Addendum (continued)

----- PAGE 2 OF 2 — FORM 560 -----

10. INTERIOR:

<input type="checkbox"/> Wall coverings	<input type="checkbox"/> Floor coverings	<input type="checkbox"/> Ceilings	<input type="checkbox"/> Walls
<input type="checkbox"/> Draperies	<input type="checkbox"/> Rods/tracks	<input type="checkbox"/> Glass doors	<input type="checkbox"/> Windows
<input type="checkbox"/> Doorknobs	<input type="checkbox"/> Fireplace	<input type="checkbox"/> Wood doors	<input type="checkbox"/> Paint
<input type="checkbox"/> Floors	<input type="checkbox"/> Baseboards/trim	<input type="checkbox"/> Hardware/fittings	<input type="checkbox"/> Shades
<input type="checkbox"/> Closets	<input type="checkbox"/> Screens	<input type="checkbox"/> Sills/jambs	<input type="checkbox"/> Kickplates/stops
<input type="checkbox"/> Chimney/flue			

11. REMARKS:

12. REPAIRS PROMISED:

12.1 _____

Completion date _____

12.2 _____

Completion date _____

<p>I agree to the terms stated above.</p> <p><input type="checkbox"/> See attached Signature Page Addendum. [RPI Form 251]</p> <p>Date: _____, 20____</p> <p>Landlord/Manager: _____</p> <p>Signature: _____</p> <p>Address: _____</p> <p>_____</p> <p>Phone: _____ Cell: _____</p> <p>Fax: _____</p> <p>Email: _____</p>	<p>I accept the premises as stated above.</p> <p><input type="checkbox"/> See attached Signature Page Addendum. [RPI Form 251]</p> <p>Date: _____, 20____</p> <p>Tenant: _____</p> <p>Signature: _____</p> <p>Tenant: _____</p> <p>Signature: _____</p> <p>Address: _____</p> <p>_____</p> <p>Phone: _____ Cell: _____</p> <p>Fax: _____</p> <p>Email: _____</p>
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Right of entry. A lease may provide the landlord the right to check the property for specific purposes. In the absence of any agreement, the landlord can enter residential property only under the following circumstances:

- An emergency requires entry.
- The tenant consents to an entry.
- The entry is during normal business hours after a reasonable notice (24 hours is considered reasonable) to make necessary or agreed repairs, alterations, or improvements, or to show the property to prospective or actual purchasers, mortgagees, tenants, workers, or contractors; landlord can enter without a 24-hour notice to make repairs requested by the tenant.
- The tenant has abandoned or surrendered the premises.
- The landlord has obtained a court order to enter.

Landlord Disclosures

Residential landlords in California must make the following disclosures to tenants:

- Existence of registered sexual offender database (Megan's Law)
- Presence of known lead-based paint
- Pesticides used and presence of known pests
- Any asbestos discovered on property
- Known carcinogenic material (if landlord has 10 or more employees)
- Documentation about any known mold
- Methamphetamines contamination
- Application for demolition permit
- That the building is within one mile of a closed military base where explosives were stored
- If a previous tenant died on the premises within the past three years
- Tenants must be notified before if the property is in a flood zone and if there is flood insurance
- If the unit is in a condominium conversion project
- Landlord must notify tenants when a pesticide to be used on the premises by other than a licensed pest control operator
- Actual knowledge if property is in a flood hazard zone or area of potential flooding
- Landlord must notify tenants as to procedure for reporting suspected bed-bug infestation

The landlord must notify the tenant of her right to reclaim personal property not taken at end of tenancy.

Landlord's Responsibilities

A residential lease has an **implied warranty of habitability**. This duty does not extend to cases in which the problem is one of tenant cleanliness. The landlord must ensure at least that the

- plumbing is in proper working order;
- the heat, lights, and wiring work and are safe;
- the floors, stairways, and railings are in good condition;
- when rented, the premises are clean and free of pests;
- areas under lessor control are maintained; and
- the roof does not leak and no doors or windows are broken.

A landlord may not show a prospective tenant a residential unit known to be infected with bedbugs. The landlord must provide the prospective tenant a written bedbug notice that includes how to identify bedbugs as well as reporting their presence.

If a landlord demands or collects rent for an untenable dwelling, the lessor is liable for actual damages sustained by the tenant and special damages of not less than \$100 or more than \$5,000. The tenant can also raise the defense of habitability against any eviction action.

Tenant's Responsibilities

If a landlord fails to take corrective action within a reasonable time of notice when a repair is the landlord's responsibility, the tenant has the following four options:

1. The tenant may abandon the property and not be held liable for back rents or an unfulfilled lease.
2. The tenant may refer the problem to a mediator, an arbitrator, or in serious circumstances, the small-claims court.
3. The tenant may notify the owner in writing of an emergency situation that must be taken care of. If the owner does not respond, the tenant may call in a professional repairman and offset the cost of repair with up to one month's rent on the next rent check. However, tenants may do this only twice in each year of tenancy.
4. The tenant can remain in possession and pay a reduced rent based on reduction of usefulness of the premises when the landlord fails to maintain a habitable dwelling.

The tenant cannot be prohibited from installing a satellite dish within the area under tenant control.

The landlord must allow the installation of a electric vehicle charging station, as long as station meets minimum standards.

The landlord must allow tenant agriculture in potable containers that meet minimum standards.

The California Civil Code states that the tenant is obligated to do the following:

- Keep the living unit clean and sanitary
- Dispose of garbage and other waste sanitarily
- Use all utility fixtures properly, keeping them clean and sanitary
- Avoid defacing or damaging property
- Use property only for its intended lawful purpose
- Pay rent on time
- Abide by rules and regulations
- Give 30-day notice when vacating (month-to-month lease)
- Return door and mailbox keys when vacating
- Leave the unit in a clean condition when vacating

Assignment vs. Sublease

Provided that the terms of the lease do not prohibit such activity, a tenant has the right to assign or sublet her interest in the property.

In an assignment, the assignee is a tenant of the landlord. In a sublease, the sublessee is the tenant of the sublessor.

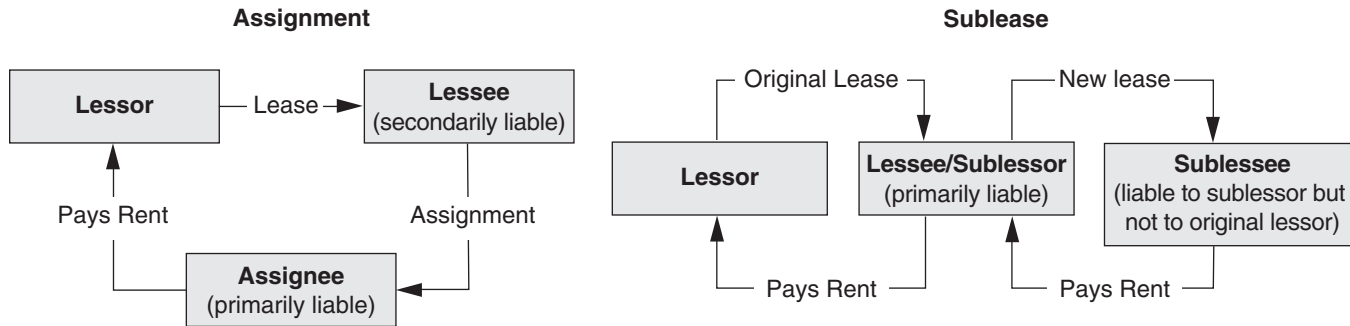
Assignment transfers the entire leasehold rights to a third party. The third party, the assignee, pays rent directly to the original lessor. While the assignee becomes primarily liable on the lease, the original lessee retains secondary liability (if assignee defaults).

A **sublease** of property transfers only a part of the tenant's interest. The sublessee pays rent to the original lessee, who in turn is responsible to the lessor. The original lessee is said to have a *sandwich lease*.

The lease should clearly indicate if it may be assigned or subleased. Lessors frequently provide that assignment or subleasing be allowed only with the approval of the lessor; however, this approval must not be unreasonably withheld.

Some leases provide that if the premises are sublet at a rent higher than the lessee is paying the lessor, the higher portion will be split between the lessor and the lessee. This encourages tenants to try to sublet for a maximum amount and also allows the lessor to share in the increased rent. (See Figure 15.6 for the difference between assignments and subleases.)

FIGURE 15.6: Assignment vs. Subletting



TERMINATION OF LEASE

A tenancy for a specified period, as in an estate for years, requires no notice for termination because the date has already been specified. Other than by expiration of the lease term, termination may be made by the following:

- The tenant for violation of the landlord's duty to place the tenant in quiet possession
- The tenant, if a victim of domestic violence or elder abuse
- The tenant or a member of tenant's family was the victim of a violent crime on the premises
- The tenant for the landlord's failure to repair
- The tenant on eviction by the landlord
- Either party on destruction of the premises
- The landlord on use of the premises for unauthorized purposes or on abandonment of the premises by the tenant
- Either party on breach of a condition of the lease
- The tenant for the landlord's breach of the implied warranty of habitability

Landlords cannot terminate or refuse to renew a lease because the tenant was the victim of domestic violence. Protection is waived if the victim allows the perpetrator to visit the property. The landlord must rekey at the tenant's request within 24 hours of written proof that a court protection order is in effect.

A tenant who gives notice to terminate based on domestic violence, sexual assault, human trafficking, or elder abuse is responsible for a maximum of 14 days rent (formerly 30 days).

A residential landlord can prohibit smoking of tobacco products in the premises if it's stated in the lease. For existing tenants, a notice of change of terms of tenancy must first be given.

The Ellis Act

The Ellis Act allows a landlord to go out of business and no longer rent the property.

Protecting Tenants at Foreclosure Act of 2009

Before this act, foreclosure of a prior lien would nullify a residential tenant lease. Now the lease survives foreclosure and the tenant is allowed to remain in possession until the lease term expires. However, if the buyer at foreclosure intends to occupy the property, the lease may be terminated with 90 days' notice.

In case of a month-to-month lease, the tenant is entitled to 90 days' notice to vacate.

Tenants in foreclosed properties must be given notice of their rights.

The California Tenant Protection Act (2019)

Provisions of the act include the following:

- It requires that a landlord have just cause to terminate a tenant.
- The act limits annual rent increases to 5% plus the local consumer price index (maximum is 10%).
- A tenant may not waive rights to protection under the act.
- If a tenant is already covered by San Francisco local eviction and rent control regulations, the act does not replace those tenant protections.

There are limited exemptions to the act, including property constructed within the prior 15 years.

While residential properties are subject to a 5% annual rent increase plus an inflation factor, exempt from the rental cap are

- single-family homes;
- condos not owned by a corporation or real estate investment trust (REIT); and
- properties where a certificate of occupancy was issued within the past 15 years.

The Costa-Hawkins Rental Housing Act allows landlords to establish a new base rent for new tenants and prohibits local rent control on structures erected after 1995.

Evictions and Unlawful Detainer

Because of COVID-19, there was a moratorium on tenant evictions for one-to-four-unit residential properties where COVID-19 was the cause of financial hardship. This has expired.

Landlords may only evict for just cause, and the reason for the eviction must be stated in the eviction notice.

A landlord may evict tenants and bring an **unlawful detainer** action against them for failure to pay rent when due, violation of provisions contained in the lease or rental agreement, or failure to vacate the premises after termination of 30-day or 60-day written notice. The process of removing a tenant for being behind in rent follows:

1. The landlord serves the tenant with a **three-day notice** to quit or pay rent. The three-day notice refers to court days not calendar days (so it does not count weekends or holidays).
2. If the tenant fails to heed the notice, the landlord files an unlawful detainer action in court.
3. If the landlord wins, the court awards the landlord a judgment. The landlord then asks for a writ of possession authorizing the sheriff to evict the tenant.
4. The sheriff sends the tenant an eviction notice. If the tenant fails to leave, the sheriff then physically removes the tenant.

Because of drug-related crime, the legislature has authorized several city attorney and prosecutor offices to bring unlawful detainer actions to abate drug-related nuisances (the landlord will be charged fees and costs).

A landlord cannot decrease services, increase rent, or evict a tenant within 180 days after the tenant exercises a right protected under the law, including the following:

- Complaining to the landlord about the habitability of the premises
- Complaining to a public agency about defects
- Lawfully organizing a tenant association

Landlords in California cannot take action against a tenant based on immigration status. Public agencies may not require landlords to report tenant citizenship status.

Retaliatory Eviction Menace

Tenants cannot waive their rights against retaliatory eviction.

Prohibition of retaliatory eviction is a defense against eviction. If a landlord is shown to have acted maliciously, the tenant will be entitled to actual damages plus \$100 to \$2,000 in punitive damages.

The landlord is subject to \$2,000 in damages for threatening a residential tenant to vacate by force or by other menacing conduct.

SUMMARY

Property management, an ancient field of real estate specialization, is on the cutting edge of technology today. Property management has made rapid strides in professionalism, and besides the Institute of Real Estate Management (IREM), there are a number of other professional organizations.

Real estate managers fall into the following three general categories:

1. Licensee/property manager, who generally works out of a property management office handling numerous properties
2. Individual property manager, who handles just one property and who usually is an employee of an owner
3. Resident property managers

Property managers' duties vary with the type of property, but basically the manager has two main duties:

1. Strive for that rent/vacancy combination that will maximize the net earnings
2. Protect the property

To accomplish these duties, a property manager needs expertise in a variety of fields, from marketing to maintenance. The property manager, as a professional, has a duty to advise the owner in the operation of the property.

While most property management is residential, residential is broken down into specialized areas, such as mobile home parks and condominium associations. Property management also can involve commercial and industrial property and even public buildings, marinas, and so forth.

Commercial and industrial property management requires special lease knowledge, as well as technical knowledge of buildings and tenant requirements.

The property manager has a management contract similar to a sale listing that provides for a management fee and a leasing fee. Fees are based on complexity of the management and the rent received. The manager is responsible for trust records and owner accounting. Many other accounting records can also aid a property manager. Computer software is available to fulfill almost all needs of the property manager.

Leases are gross, net, percentage, or a combination of all three. Generally, net and percentage leases are found in connection with commercial rentals. To protect the owner in residential leasing, a rental application allows the owner to check out a tenant before committing to the tenant. Leases should be used for all tenancies, even month-to-month agreements, because they spell out rights and obligations of the parties.

In a lease assignment, all of the tenants' interests are transferred. In a sublease, the sublessor remains on the lease and the sublessee is the tenant's tenant.

Leases may be terminated for a number of reasons. If a tenant has breached a lease, the owner can sue for damages. The owner also may evict a tenant for breach of a material provision of the lease or if the tenant fails to leave after proper notice.

Residential landlords have disclosure requirements that relate to health and safety.

Residential landlord responsibilities include keeping the plumbing and other systems in operating order and keeping the structure safe and tight from the elements and free of pests. Residential tenant duties include keeping the unit clean; disposing of garbage properly; avoiding damaging the premises, systems, or appliances; paying rent on time; and leaving the unit clean when vacating.

A landlord may not evict a tenant (retaliatory eviction) because the tenant complained to the landlord or a public agency about the condition of the premises, or because the tenant lawfully organized a tenant group.

The Protecting Tenants at Foreclosure Act of 2009 allows residential tenants to remain in possession until the end of their lease. Month-to-month tenants are entitled to a 90-day notice to vacate.

CLASS DISCUSSION TOPICS

1. A particular percentage lease provides that after a tenant reaches a specific gross annual amount, the percentage decreases. Why was this written into the lease?
2. Identify property in your geographic area that you feel needs professional property management. Why?
3. Which offices in your area have separate property management departments?
4. Which properties in your area do you think would require the greatest management effort? Why?
5. Identify a nonresidential property in your community that has been vacant for a long time. What type of tenant would the property be suited for, and how would you market the property?
6. Do you know of any property where you feel the security is inadequate? If so, why? What could be done to provide better security?
7. Bring to class one current-events article dealing with some aspect of real estate practice for class discussion.

UNIT QUIZ

1. The term *CPM* refers to
 - a. California Property Manager.
 - b. Certified Property Manager.
 - c. Certified Professional Manager.
 - d. none of these.
2. Which of the following statements regarding a property manager's compensation is *TRUE*?
 - a. Compensation is generally a percentage of the gross.
 - b. As the income of properties managed increases, the percentage fee charged tends to increase.
 - c. Both of these.
 - d. Neither of these.
3. Property managers can be protected against receiving no fees when managing a vacant property they are unable to rent by a
 - a. holdover clause.
 - b. recapture clause.
 - c. minimum fee.
 - d. separate leasing fee.
4. A lease for 30 months would be described as
 - a. an estate at sufferance.
 - b. an estate at will.
 - c. an estate for years.
 - d. a periodic tenancy.
5. A lease under which the tenant is to pay \$500 per month for three years is a
 - a. gross lease.
 - b. net lease.
 - c. percentage lease.
 - d. month-to-month lease.
6. A lease that contains a minimum rent and a covenant to remain in business is
 - a. a percentage lease.
 - b. a net lease.
 - c. a gross lease.
 - d. none of these.
7. Which business would likely pay the highest percentage on a percentage lease?
 - a. Parking lot
 - b. Supermarket
 - c. Clothing store
 - d. Restaurant

8. Which business is likely to pay the lowest percentage on a percentage lease?
 - a. Sporting goods store
 - b. Music shop
 - c. Supermarket
 - d. Clothing store
9. A valid two-year lease need *NOT*
 - a. have parties capable of contracting.
 - b. contain a legal description of the property.
 - c. contain the amount of rent and manner of payment.
 - d. be a written agreement.
10. Which statement regarding security deposits is *TRUE*?
 - a. Nonrefundable cleaning deposits are not allowed.
 - b. Deposits for furnished rentals can't exceed three months' rent.
 - c. Security deposits for unfurnished rentals can't exceed two months' rent.
 - d. All of these.

APPENDIX

INTERNET SITES FOR REAL ESTATE PROFESSIONALS

The following is a partial listing of thousands of real estate–related sites. Neither the authors nor the publisher recommend any particular sites, but we have included these for your own evaluation.

APARTMENTS FOR RENT

www.apartments.com
www.apartmentfinder.com
www.apartmentlist.com
www.doorsteps.com
www.homes.com/apartments-for-rent/
www.nestigator.com
www.trulia.com
www.rent.com
www.rentals.com
www.vrbo.com
www.zillow.com
www.zumper.com

ASSOCIATIONS

Association of Real Estate License Law Officials
www.arello.org

Building Owners and Managers Association
www.boma.org

California Association of REALTORS®
www.car.org

California Community Colleges Real Estate Education Center
<http://cccreec.org>

California Real Estate Education Association
www.creea.org

Federation of Exchange Accommodators
www.1031.org

Institute of Real Estate Management
www.irem.org

International Association of Home Staging Professionals
www.iahsp.com

NAR Code of Ethics
www.realtor.org/code-of-ethics/

National Apartment Association
www.naahq.org

National Association of Real Estate Brokers
www.nareb.com

National Association of Real Estate Investment Trusts (REITs)
www.reit.com/nareit

National Association of REALTORS®
www.realtor.org

Real Estate Educators Association
www.reea.org

Real Estate Staging Association
www.realestatestagingassociation.com

BOOKS

www.dearborn.com/products/bookstore/
www.nolo.com

CAN-SPAM (EMAIL SOLICITATIONS)

www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business

CHOOSING A BROKER

www.homegain.com (Homeowners post their property and desired form of representation and brokers send their proposals. This site also includes homeowner and homebuyer information.)

CMA GENERATING SOFTWARE

www.cloudcma.com

CREDIT REPORTS

www.annualcreditreport.com

DO-NOT-CALL REGISTRY

www.donotcall.gov

DO-IT-YOURSELF FORMS

www.legalzoom.com

ENVIRONMENTAL LAW

<http://resources.ca.gov/> (an information site developed by the California Natural Resources Agency that includes a database containing California environmental law with links to federal law)

ENVIRONMENTAL PROTECTION AGENCY SITE

www.epa.gov

FORECLOSURES

www.realtytrac.com

FORMS

California Association of REALTORS® (CAR)
www.car.org/

First Tuesday (RPI forms)
www.firsttuesday.us

FOR SALE BY OWNER

www.craigslist.com
www.forsalebyowner.com
www.FSBO.com
www.homepoint.com
www.byowner.com/ad-posting
www.theredx.com

GOVERNMENT-RELATED SITES

California Department of Real Estate
www.dre.ca.gov

California Department of Fair Employment and Housing
www.dfeh.ca.gov

California Department of Finance
www.dof.ca.gov

California Department of Housing and Community Development
<https://www.hcd.ca.gov/node/35>

California Department of Justice
www.meganslaw.ca.gov (listing of names, addresses and zip codes of registered sex offenders)

California Office of Real Estate Appraisers
www.brea.ca.gov

Consumer Price Index
www.bls.gov/cpi/

Department of Housing and Urban Development (HUD)
www.hud.gov

Department of Veterans Affairs
www.va.gov

Environmental Protection Agency
www.epa.gov

Fair Housing (HUD)
www.hud.gov/fairhousing/

Fannie Mae
www.fanniemae.com

Farmer Mac
www.farmermac.com

Federal Reserve Bank of San Francisco
www.frbsf.org

Freddie Mac
www.freddiemac.com

Ginnie Mae
www.ginniemae.gov

Government websites (search engine)

www.usa.gov

National Flood Insurance Program

www.fema.gov/flood-insurance

HOME PRICES (VALUE)

www.realtytrac.com (recent home prices by area)

www.zillow.com

LISTINGS OF PROPERTY FOR SALE

www.homes.com/california/homes-for-sale/

www.century21.com

www.coldwellbanker.com

www.coldwellbankerpreviews.com

www.craigslist.org

www.era.com

www.forsalebyowner.com

www.homefinder.com

www.homes.com

www.oodle.com

www.realtor.com

www.realtyexecutives.com

www.remax.com

www.trulia.com

www.zillow.com

Note: Most of the listed sites also provide for loan prequalification and application.

LOANS

www.bankofamerica.com

www.bankrate.com

www.eloan.com

www.mrcooper.com

www.lendingtree.com

www.mortgageloan.com

www.quickenloans.com

www.wellsfargo.com

MAPS

www.digmap.com

MORTGAGE CALCULATIONS

www.bankrate.com

www.homefair.com

www.interest.com

PROFESSIONAL INFORMATION

Federation of Exchange Accommodators
www.1031.org

Inman News
www.inman.com

The Real Estate Library
www.relibrary.com

The Real Estate Professional magazine
www.therealestatepro.com

RealtyNow
www.realtynow.com

RealtyTimes
www.realtytimes.com

RISMedia (Real Estate Magazine)
www.rismedia.com

REAL ESTATE ATTORNEYS

www.lawyers.com

www.martindale.com

real-estate-law.freeadvice.com/legal/real-estate-law/

RENTAL COMPARABLES

www.realpage.com

www.rentometer.com

STAGING

www.realestatestagingassociation.com

VIRTUAL HOME TOURS

www.abirdseye.com
www.easypano.com
<https://matterport.com>
www.paradym.com
www.spotlighthometours.com

GLOSSARY

abstract of title A summary or digest of all recorded transfers, conveyances, legal proceedings, and any other facts relied on as evidence of title to show continuity of ownership and indicate any possible impairment to title.

acceleration clause A provision in a real estate financing instrument that allows the lender to declare the remaining indebtedness due and payable on the occurrence of certain conditions, such as the sale of the property or the borrower's default in payment.

acceptance Indication by the person to whom an offer is made (the offeree) of agreement to the terms of the offer. If the offer requires a writing, the acceptance also must be in writing.

accession The process of manufactured or natural improvement or addition to property.

accommodating party Third party who has control of funds in delayed exchange.

accretion Accession by natural forces, such as alluvion.

acknowledgment A formal declaration made before an authorized person by a person who has executed a written instrument, stating that the execution of the instrument is the person's own act.

acquisition cost For FHA-insured loans, the price to procure property, including purchase price and all nonrecurring closing costs, including discount points, FHA application fee, service charge and credit report, FHA appraisal, escrow, document preparation, title insurance, termite inspection, reconveyance, and recording fees.

acre A measure of land equaling 160 square rods, 4,840 square yards or 43,560 square feet, or a tract about 208.71 feet square.

action for declaratory relief Legal proceeding brought to determine the respective rights of the parties before a controversy arises.

action to quiet title A court proceeding brought to establish title to real property.

actual age The number of years since completion of a building; also called *historical* or *chronological age*.

actual authority The authority agents have because it is specified in the agency agreement or that the agents believe they have because of an unintentional or careless act of the principal.

ad valorem A Latin phrase meaning "according to value," used to describe a tax charged in relation to the value of the property taxed.

administrator/administratrix Personal representative of the estate of a decedent, appointed by the probate court. *See also* **executor/executrix**.

adverse possession A method of acquiring title to real property by occupying the property against the interests of the true owner and fulfilling other statutory requirements.

affordability index An NAR index that measures the ability of median family income to support a mortgage for the median-priced home. An index of 100 means that the median income is equal to the amount necessary to afford the median-priced home.

after-acquired title If title is acquired by a grantor only after a conveyance to a grantee, the deed to the grantee becomes effective at the time the grantor actually receives title.

agency The relationship between a principal and the agent of the principal that arises out of a contract, whether express or implied, written or oral, by which the agent is employed by the principal to do certain acts dealing with a third party.

agent One who acts for and with authority from another person, called the principal; a special agent is appointed to carry out a particular act or transaction, and any other agent is a general agent.

air rights The real property right to the reasonable use of the airspace above the surface of the land.

alienation The transferring of property to another.

all-inclusive trust deed See **wraparound mortgage or trust deed**.

alluvion Alluvium; the increase of soil along the bank of a body of water by natural forces.

Americans with Disabilities Act Federal law prohibiting discrimination that would deny the equal enjoyment of goods, services, facilities, and accommodations in any existing place of public accommodation, based on an individual's physical or mental disabilities.

amortization The payment of a financial obligation in installments; recovery over a period of time of cost or value. An amortized loan includes both principal and interest in approximately equal payments, usually due monthly, resulting in complete payment of the amount borrowed, with interest, by the end of the loan term. A loan has negative amortization when the loan payments do not cover all the interest due, which then is added to the remaining loan balance.

annual percentage rate (APR) The relative cost of credit as determined in accordance with Regulation Z of the Board of Governors of the Federal Reserve System for implementing the federal Truth in Lending Act.

anticipation, principle of Expectation that property will offer future benefits, which tends to increase present value.

apparent authority Authority to act as an agent that someone appears to have but does not actually have, which will place no obligation on the party the agent claims to represent if that party is in no way responsible for the representation.

appraisal An estimate of a property's monetary value on the open market; an estimate of a property's type and condition, its utility for a given purpose, or its highest and best use.

appropriation, right of See **right of appropriation**.

appurtenance Anything affixed (attached) to or used with land for its benefit and that is transferred with the land.

APR See **annual percentage rate**.

area Measure of the floor or ground space within the perimeter of a building or land parcel.

arm's-length transaction A transaction in which neither party acts under duress and both have full knowledge of the property's assets and defects, the property involved has been on the market a reasonable length of time, there are no unusual circumstances, and the price represents the normal consideration for the property sold without extraordinary financing.

assessed valuation A valuation placed on a piece of property by a public authority as a basis for levying taxes on that property.

assessor The official responsible for determining assessed values.

associate broker A broker who works for another broker in a salesperson capacity.

assumption An undertaking or adoption of a debt or an obligation resting primarily on another person.

attachment The process by which the real or personal property of a party to a lawsuit is seized and retained in the custody of the court; intended to compel an appearance before the court or to furnish security for a debt or costs arising out of the litigation.

attorney-in-fact An agent who has been granted a power of attorney by a principal.

avulsion The tearing or washing away of land along the bank of a body of water by natural forces.

balance, principle of The combination of land uses that results in the highest property values overall.

balloon payment An installment payment on a promissory note—usually the final payment—that is significantly larger than the other installment payments.

bankruptcy A federal court proceeding in which the court takes possession of the assets of an insolvent debtor and sells the nonexempt assets to pay off creditors on a pro rata basis; title to the debtor's assets is held by a trustee in bankruptcy.

base lines Imaginary lines that run east-west and intersect meridians that run north-south to form the starting point for land measurement using the rectangular survey system of land description.

basis Cost basis is the dollar amount assigned to property at the time of acquisition under provisions of the Internal Revenue Code for the purpose of determining gain, loss, and depreciation in calculating the income tax to be paid on the sale or exchange of the property; adjusted cost basis is derived after the application of certain additions, such as for improvements, and deductions, such as for depreciation.

beneficiary One on whose behalf a trustee holds property conveyed by a trustor; the lender under a deed of trust.

bequest Transfer of property, particularly personal property, called a *legacy*, by will. See also **devise**.

bill of sale Written instrument that conveys title to personal property.

bitcoin A cryptocurrency that has a fluctuating value.

blanket mortgage A loan covering more than one property.

blind ad An ad that fails to indicate that the advertiser is an agent.

blockbusting The practice on the part of unscrupulous speculators or real estate agents of inducing panic selling of homes at prices below market value, especially by exploiting the prejudices of property owners in neighborhoods in which the racial makeup is changing or appears to be on the verge of changing.

bond An obligation; a real estate bond is a written obligation issued on security of a mortgage or trust deed.

book value The current value for accounting purposes of an asset expressed as original cost plus capital additions minus accumulated depreciation.

breach The failure of a duty imposed by law or by contract, either by omission or commission.

broker associate A licensed broker working as a salesperson.

building code Standards for building, planning, and construction established by state law and local ordinance.

bundle of rights The legal rights of ownership of real property, including the rights of possession, use, disposition, and exclusion of others from the property.

Bureau of Real Estate The former name for Department of Real Estate.

business opportunity The assets of an existing business enterprise, including its goodwill.

buyer's market Real estate marketplace that has more sellers than buyers.

CalVet loan Home or farm loan procured through the California Veterans Farm and Home Purchase Program.

capital assets Assets of a permanent nature used in the production of income, such as land, buildings, machinery, and equipment; usually distinguishable under income tax law from "inventory," assets held for sale to customers in the ordinary course of the taxpayer's trade or business.

capital gain The amount by which the net resale proceeds of a capital item exceed the adjusted cost basis of the item.

capitalization rate The rate of interest that is considered a reasonable return on an investment, used in the process of determining value based on net operating income; the yield necessary to attract investment.

capitalization recapture The return of an investment; an amortization rate based on the right of the investor to get back the purchase price at the end of the term of ownership or over the productive life of the improvements; computed by straight-line depreciation, by using Inwood tables or Hoskold tables. (Students should refer to a real estate appraisal text for further explanation.)

Cartwright Act California's antitrust act.

cash flow The net income generated by a property before depreciation and other noncash expenses.

CC&Rs Covenants, conditions, and restrictions; limitations on land use imposed by deed, usually when land is subdivided, as a means of regulating building construction, density, and use for the benefit of other property owners; may be referred to simply as *restrictions*.

- certificate of reasonable value** Property appraisal required for a VA-guaranteed loan.
- certificate of redemption** Issued by the county tax collector when all past due amounts have been paid.
- certificate of sale** Document received by the buyer at an execution or a judicial foreclosure sale; replaced by a sheriff's deed if the debtor fails to redeem the property during the statutory redemption period.
- certificate of title** Statement of a property's owner of record as well as any existing encumbrances.
- chain of title** The history of the conveyances and encumbrances affecting the present owner's title to property, as far back as records are available.
- change, principle of** Effect on property value of constantly varying physical, economic, social, and political forces.
- chattel mortgage** Use of personal property to secure or guarantee a promissory note.
- chattel real** An estate related to real estate, such as a lease of real property.
- chattels** Personal property; any property that is not real property.
- Civil Rights Act of 1866** The first U.S. civil rights act. It applied to race only and had no exceptions.
- Civil Rights Act of 1968** This comprehensive act is known as the Fair Housing Act.
- closing** The completion of a real estate transaction, at which point required documents are transmitted and funds are transferred.
- Closing Disclosure** New form mandated by the TILA-RESPA rule that helps consumers to understand all the costs of the transaction. It must be provided to consumers three business days before closing.
- cloud on the title** Any claim, condition, or encumbrance that impairs title to real property.
- coastal zone** An area of about 1,800 square miles that runs the length of the state from the sea inland about 1,000 yards, with wider spots in coastal estuarine, habitat, and recreational areas; any development or improvement of land within the coastal zone must meet local requirements for coastal conservation and preservation of resources, as authorized by the Coastal Zone Conservation Act.
- codicil** Written amendment to a will, made with the same legal formalities.
- color of title** A claim of possession to real property based on a document erroneously appearing to convey title to the claimant.
- commingling** Mixing broker and principal funds.
- commission** An agent's compensation for performing the duties of the agency; in real estate practice, typically a percentage of the selling price of property, rentals, or other property value.
- common law** The body of law from England based on custom, usage, and court decisions.
- community apartment project** A form of subdivision in which the owner has an individual interest in the land and exclusive right of occupancy of an apartment on the land.

community property All property acquired by husband and wife during marriage except that qualifying as separate property.

community redevelopment agency (CRA) An agency authorized by state law but formed by a local governing body to provide low-and moderate-income housing and employ low-income persons by rehabilitating existing structures and/or bringing new development.

comparative market analysis Informal estimate of market value performed by a real estate agent for either seller or buyer, utilizing the sales history of nearby properties; usually expressed as a range of values that includes the probable market value of the subject property.

competition, principle of Business profits encourage competition, which ultimately may reduce profits for any one business.

compound interest Interest paid on original principal and also on the accrued and unpaid interest that has accumulated as the debt matures.

concurrent ownership Ownership of property by more than one person, not necessarily in equal shares.

condemnation See **eminent domain**.

condition A qualification of an estate granted that can be imposed only in a conveyance; it can be a condition precedent or a condition subsequent. See also **CC&Rs**.

condition precedent A qualification of a contract or transfer of property providing that unless and until the performance of a certain act, the contract or transfer will not take effect.

condition subsequent A stipulation in a contract or transfer of property that already has taken effect that will extinguish the contract or defeat the property transfer.

condominium A subdivision providing an exclusive ownership (fee) interest in the airspace of a particular portion of real property, as well as an interest in common in a portion of that property.

conforming loan Loan that meets Fannie Mae and Freddie Mac purchase criteria.

conformity, principle of Holds that property values are maximized when buildings are similar in design, construction, and age, particularly in residential neighborhoods.

consideration Anything of value given or promised by a party to induce another to enter into a contract; may be a benefit conferred on one party or a detriment suffered by the other.

constructive eviction Interference by the landlord in a tenant's legitimate use of leased property, such as by making unwarranted alterations to the property.

contract A written or oral agreement to do or not to do certain things. There may be an express agreement of the parties, or a contract may be implied by their conduct. A unilateral contract imposes an obligation on only one of the parties, whereas both parties to a bilateral contract have an obligation to perform. A contract is executory when a contract obligation is to be performed in the future, and executed when all obligations have been performed and the contract transaction has been completed. A real estate

contract must be a signed writing made by competent parties, for valuable consideration, with an offer by one party that is accepted by the other.

contribution, principle of A component part of a property is valued in proportion to its contribution to the value of the entire property, regardless of its separate actual cost.

conventional loan A loan secured by a mortgage or trust deed that is made without governmental underwriting (FHA-insured or VA-guaranteed).

cooperative apartment See **stock cooperative**.

corporation A legal entity that acts through its board of directors and officers, generally without liability on the part of the person or persons owning it. A domestic corporation is one chartered in California—any other corporation is a foreign corporation in California.

correction lines Guide meridians running every 24 miles east and west of a meridian, and standard parallels running every 24 miles north and south of a base line, used to correct inaccuracies in the rectangular survey system of land description caused by the earth's curvature.

cost approach Appraisal method in which site value is added to the present reproduction or replacement cost of all property improvements, less depreciation, to determine market value.

Costa-Hawkins Rental Housing Act Statute that allows landlords of rent-controlled property to set new base rents for new tenants.

covenant An agreement or a promise to do or not to do a particular act, usually imposed by deed. See also **CC&Rs**.

covenant of quiet enjoyment Promise of a landlord, implied by law, not to interfere in the possession or use of leased property by the tenant.

covenant to repair Express or legally implied obligation of the landlord to make necessary repairs to leased premises.

data mining The process of finding patterns in large amounts of data.

declaration of homestead See **homestead**.

dedication The giving of land by its owner for a public use, and the acceptance of the land for such use by the appropriate government officials.

deed Written instrument that, when properly executed and delivered, conveys title to real property from a grantor to a grantee.

deed in lieu of foreclosure A deed to real property accepted by a lender from a defaulting borrower to avoid the necessity of foreclosure proceedings by the lender.

deed of trust See **trust deed**.

defendant A person against whom legal action is initiated for the purpose of obtaining criminal sanctions (in a case involving violation of a penal statute) or damages or other appropriate judicial relief (in a civil case).

deficiency judgment A judgment given by a court when the value of security pledged for a loan is insufficient to pay off the debt of the defaulting borrower.

demand statement Statement requested by escrow as to amount due lender at close of escrow to pay off loan and any charges.

Department of Real Estate The California agency that administers the real estate law, including the licensing of real estate brokers and salespeople;

headed by the real estate commissioner, who is appointed by the governor and presides over the Real Estate Advisory Commission (whose 10 members are appointed by and serve at the commissioner's discretion).

depreciation Decrease in value of an asset that is allowed in computing property value for tax purposes; in appraising, a loss in the value of a property improvement from any cause; depreciation is *curable* when it can be remedied by a repair or an addition to the property, and it is *incurable* when there is no easy or economic way to cure the loss. *See also* **physical deterioration**, **functional obsolescence**, and **external obsolescence**.

desk fee A payment agreement between the broker and the agent.

designated agent In some states one agent in an office can be the seller's agent and another agent in the same office can be the buyer's agent.

devise Transfer of title to property by will. *See also* **bequest**.

devisee Person receiving title to property by will. *See also* **legatee**.

devisor One who wills property to another.

direct endorsement A lender who is authorized to determine if a loan qualifies for FHA insurance.

discount points *See* **points**.

discount rate Interest rate charged member banks by Federal Reserve Banks.

documentary transfer tax A tax applied on all transfers of real property located in a county where the county is authorized by the state to collect; notice of payment is entered on the face of the deed or on a separate paper filed with the deed.

Dodd-Frank Act The Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law in 2010.

dominant tenement *See* **easement**.

donee One who receives a gift.

donor One who makes a gift.

dual agency An agency relationship in which the agent represents two principals in their dealings with each other.

due-on-sale clause An acceleration clause in a real estate financing instrument granting the lender the right to demand full payment of the remaining indebtedness on a sale of the property.

e-PRO certification NAR professional designation of an internet professional.

easement The right to a specific use of or the right to travel over the land of another. The land being used or traveled over is the servient tenement; the land that is benefited by the use is the dominant tenement. An easement appurtenant is a property interest that belongs to the owner of the dominant tenement and is transferred with the land; an easement in gross is a personal right that usually is not transferable by its owner.

easement by prescription Acquiring a specific use of or the right to travel over the land of another by statutory requirements similar to those for adverse possession.

economic life The period of time over which an improved property will yield a return on investment over and above the return attributable solely to the land.

economic obsolescence *See* **external obsolescence**.

- economic rent** The reasonable rental expectancy if the property were available for renting at the time of its valuation.
- effective gross income** Property income from all sources, less allowance for vacancy and collection losses.
- effective rent** Scheduled rent adjusted for rental incentives given.
- elder abuse law** Requirement that realty agents and others report elder financial abuse, fraud, or undue influence.
- emblems** Crops produced annually by labor and industry, as distinguished from crops that grow naturally on the land.
- eminent domain** The right of the government to acquire title to property for public use by condemnation; the property owner receives compensation—generally fair market value. *See also* **inverse condemnation**.
- encroachment** The unlawful intrusion of a property improvement onto adjacent property.
- encumbrance** Anything that affects or limits the fee simple title to or affects the condition or use of real estate.
- environmental impact report (EIR)** Evaluation of effects on the environment of a proposed development; may be required by local government.
- environmental obsolescence** *See* **external obsolescence**.
- Equal Credit Opportunity Act** Act that prohibits lender discrimination against a borrower based on the fact that the source of income is public assistance.
- Equator Platform** A system for obtaining short sale approval.
- equity of redemption** The right to redeem property during the foreclosure period, or during a statutorily prescribed time following a foreclosure sale.
- escalator clause** Provision in a lease agreement for an increase in payments based on an increase in an index, such as the Consumer Price Index.
- escheat** The reverting of property to the state when there are no heirs capable of inheriting.
- escrow** The deposit of instruments and/or funds (with instructions) with a neutral third party to carry out the provisions of an agreement or a contract.
- escrow agent** Escrow holder; the neutral third-party company holding funds or something of value in trust for another or others.
- escrow offices** The employee of the escrow agent who handles the escrow.
- estate** The interest held by the owner of property.
- estate at sufferance** The occupancy of a tenant after the lease term expires.
- estate at will** A tenancy in which the tenant's time of possession is indefinite.
- estate for years** A tenancy for a fixed term.
- estate from period to period** Periodic tenancy; a tenancy for a fixed term, automatically renewed for the same term unless the owner or the tenant gives the other written notice of intention to terminate the tenancy.
- eviction** Dispossession by process of law.
- exchange** A means of trading equities in two or more real properties, treated as a single transaction through a single escrow.
- exclusive-agency listing** A listing agreement employing a broker as sole agent for a seller of real property under the terms of which the broker is entitled to

compensation if the property is sold through any other broker, but not if a sale is negotiated by the owner without the services of an agent.

exclusive-authorization-and-right-to-sell listing A listing agreement employing a broker as agent for a seller of real property under the terms of which the broker is entitled to compensation if the listed property is sold during the duration of the listing, whether by the listing agent, another agent, or the owner acting without the services of an agent.

executor/executrix Personal representative of the estate of a decedent, named in the decedent's will. *See also* **administrator/administratrix**.

express agreement An agreement established by a deliberate act of the parties that both parties acknowledge as their intention.

external obsolescence Economic or environmental obsolescence; loss in value due to outside causes, such as changes in nearby land use.

facilitator A real estate agent working in a neutral nonagency relationship with the parties to facilitate a transaction.

Fair Employment and Housing Act *See* **Rumford Act**.

Fannie Mae (Federal National Mortgage Association) Now a private corporation dealing in the secondary mortgage market.

Farmer Mac (Federal Agricultural Mortgage Corporation) Now a private corporation providing a secondary mortgage market for farms and rural housing.

fee simple absolute A fee simple estate with no restrictions on its use.

fee simple defeasible An interest in land, such as a fee simple conditional or fee simple with special limitation, that may result in the estate of ownership being defeated.

fee simple estate The greatest interest in real property one can own, including the right to use the property at present and for an indeterminate period in the future.

fee simple qualified A fee simple estate with some restrictions on the right of possession.

feng shui Laws governing orientation and spatial relationship in regard to the flow of energy.

fiduciary A person in a position of trust and confidence who owes a certain loyalty to another, such as an agent to a principal.

final subdivision map *See* **tentative subdivision map**.

fiscal year A business or an accounting year as distinguished from a calendar year.

fixture Anything permanently attached to land or improvements so as to become real property.

foreclosure Sale of real property by mortgagee, trustee, or other lienholder on default by the borrower. *See also* **judicial foreclosure action**.

form appraisal report A short report, typically two pages plus addenda, using a preprinted form to summarize the data contributing to an appraiser's conclusion of value.

fraud The intentional and successful use of any cunning, deception, collusion, or artifice to circumvent, cheat, or deceive another person, so that the other person acts on it to the loss of property and legal injury; actual fraud is a

deliberate misrepresentation or a representation made in reckless disregard of its truth or falsity, the suppression of truth, a promise made without the intention to perform it or any other act intended to deceive; constructive fraud is any misrepresentation made without fraudulent intent (the deliberate intent to deceive). Fraud is affirmative when it is a deliberate statement of a material fact that the speaker knows to be false and on which the speaker intends another person to rely, to the speaker's detriment. Fraud is negative when it is a deliberate concealment of something that should be revealed.

Freddie Mac (Federal Home Loan Mortgage Corporation) Now a private secondary mortgage corporation.

freehold estate An estate in land in which ownership is for an indeterminate length of time, as in a fee simple or life estate.

front foot Property measured by the front linear foot on its street line, each front foot extending the depth of the lot.

functional obsolescence Loss in value due to adverse factors within a structure that affect its marketability, such as its design, layout, or utility.

general partnership An association of two or more persons to carry on a business as co-owners for profit.

general plan Master plan; includes a statement of policy of the development and land uses within a city or county and a program to implement that policy.

gift deed A deed for which the only consideration is "love and affection."

Ginnie Mae (Government National Mortgage Association) A government corporation that provides assistance to federally related housing projects. Funds are raised by selling securities backed by pools of mortgages.

goodwill An intangible but salable asset of a business derived from the expectation of continued public patronage.

grant deed A limited warranty deed using a granting clause—the word *grant* or words to that effect—assuring the grantee that the estate being conveyed is free from encumbrances placed on the property by the present owner (the grantor) and that the grantor has not previously conveyed the property to anyone else.

grantee A person to whom property is transferred by grant.

grantor A person conveying property to another by grant.

gross income Total property income from all sources before any expenses are deducted.

gross income multiplier Gross rent multiplier; a number derived by dividing the sales price of a comparable property by the income it produces, which then is multiplied by the gross income produced by the subject property to derive an estimate of value.

gross lease Provides for the tenant to pay a fixed rental over the lease term, with the landlord paying all expenses of ownership, such as taxes, assessments, and insurance.

ground lease An agreement for the use of land only, sometimes secured by improvements placed on the land by the user.

ground rent Earnings of improved property credited to earnings of the ground itself after allowance is made for earnings of improvements.

guarantee of title Guarantee of title as determined from examination of the public records and described in the guarantee document.

guide meridians See **correction lines**.

hard money loans Cash loans made by individual investors.

highest and best use In appraising real estate, the most profitable, physically possible, and legally permissible use for the property under consideration.

holder in due course Someone who takes a negotiable instrument for value, in good faith and without notice of any defense against its enforcement that might be made by any person.

holdover tenancy Possession of property by a tenant who remains in possession after the expiration or termination of the lease term.

holographic will A will written entirely in the testator's handwriting, signed and dated by the testator.

homestead A statutory exemption of real property used as a home from the claims of certain creditors and judgments up to a specified amount; requires a declaration of homestead to be completed and filed in the county recorder's office.

implied warranties Warranties by grantor to grantee that will be implied by law, even if not mentioned in the deed; the grantor warrants that he has not already conveyed the property and that there are no encumbrances on the property brought about by the grantor or any person who might claim title from the grantor.

income capitalization approach Appraisal method in which the actual or likely net operating income of property is divided by its expected rate of return (capitalization rate) to arrive at an estimate of market value. See also **capitalization rate**.

independent contractor A person employed by another who has almost complete freedom to accomplish the purposes of the employment.

index method Way of estimating building reproduction cost by multiplying the original cost of the subject building by a factor that represents the percentage change in construction costs, generally from the time of construction to the time of valuation.

inherent authority The authority of an agent to perform activities that are not specifically mentioned in the agency agreement but are necessary or customary to carry out an authorized act.

injunction A writ or an order issued by a court to restrain one or more parties to a suit or proceeding from doing an act deemed to be inequitable or unjust in regard to the rights of some other party or parties in the suit or proceeding.

installment sales contract See **sales contract**.

institutional lenders A financial intermediary or depository, such as a savings association, commercial bank, or life insurance company, that pools the money of its depositors and then invests funds in various ways, including trust deeds and mortgage loans.

interest A portion, share, or right in something; partial ownership; the charge in dollars for the use of money for a period of time.

interest rate The percentage of a sum of money borrowed that is charged for its use.

interim loan A short-term temporary loan used until permanent financing is available, typically during building construction.

interpleader A court proceeding that may be brought by someone, such as an escrow agent, who holds property for another, for the purpose of deciding who among the claimants is legally entitled to the property.

intestate succession Statutory method of distribution of property that belonged to someone who died intestate (without having made a valid will).

inverse condemnation A legal action brought by the owner of land when government puts nearby land to a use that diminishes the value of the owner's property.

joint tenancy Ownership of property by two or more co-owners, each of whom has an equal share and the right of survivorship.

joint venture Two or more individuals or firms joining together on a single project as partners, typically with a lender contributing the necessary funds and the other partner(s) contributing their expertise.

judgment The final determination of a court of competent jurisdiction of a matter presented to it; may include an award of money damages.

judicial foreclosure action Proceeding in which a mortgagee, a trustee, or another lienholder on property requests a court-supervised sale of the property to cover the unpaid balance of a delinquent debt.

land The earth's surface, including substances beneath the surface extending downward to the center of the earth and the airspace above the surface for an indefinite distance upward.

land contract See **sales contract**.

landlord Lessor; one who leases property to another.

lateral support The support that the soil of an adjoining owner gives to a neighbor's land.

lease A contract between a property owner, called *lessor* or *landlord*, and another, called *lessee* or *tenant*, conveying and setting forth the conditions of occupancy and use of the property by the tenant.

leaseback See **sale-leaseback**.

leasehold estate A tenant's right to occupy real estate during the term of the lease; a personal property interest.

legacy Property, usually personal property, transferred by will.

legal description A land description used to define a parcel of land to the exclusion of all others that is acceptable by a court of law.

legatee Person who receives property, called a legacy, by bequest. See also *devisee*.

letter of opinion A letter from appraiser to client presenting only the appraiser's conclusion of value, with no supporting data.

leverage Use of debt financing to purchase an investment, thus maximizing the return per dollar of equity invested; enables a purchaser to obtain possession

for little or no initial cash outlay and relatively small periodic payments on the debt incurred.

lien An encumbrance that makes property security for the payment of a debt or discharge of an obligation; a voluntary lien is one agreed to by the property owner, such as a deed of trust; an involuntary lien exists by operation of law to create a burden on property for certain unpaid debts, such as a tax lien.

life estate An interest in real property conveying the right to possession and use for a term measured by the life or lives of one or more persons, most often the holder of the life estate.

limited equity housing cooperative A stock cooperative financed by the California Housing Finance Agency.

limited partnership Partnership of one or more general partners, who run the business and are liable as partners, and limited partners, investors who do not run the business and are liable only up to the amount invested.

liquidated damages An amount agreed on by the parties to be full damages if a certain event occurs.

listing agreement Authorization by the owner of property, acting as principal, for a real estate broker to act as the agent of the principal in finding a person to buy, lease, or rent property; may be used to employ a real estate broker to act as agent for a person seeking property to buy, lease, or rent.

Loan Estimate New form mandated by the TILA-RESPA rule that helps consumers to understand the key features, costs, and risks of a mortgage loan. It must be provided to consumers no later than three business days after they submit a loan application.

lot and block system Subdivision system; method of legal description of land using parcel maps identified by tract, block, and lot numbers.

marker See *metes and bounds*.

market comparison approach See *sales comparison approach*.

market data approach See *sales comparison approach*.

market value The most probable price a property would bring in an arm's-length transaction under normal conditions on the open market. See also *arm's-length transaction*.

marketable title Title that a reasonably prudent purchaser, acting with full knowledge of the facts and their legal significance, would be willing and ought to accept.

material fact A fact that would be likely to affect the judgment of a person to whom it is known, such as information concerning the poor physical condition of a building that is for sale.

mechanic's lien A statutory lien against real property in favor of persons who have performed work or furnished materials for the improvement of the property.

Mello-Roos bonds Improvement bonds that place offsite improvement costs on the home purchaser rather than on the developer.

meridians Imaginary lines that run north to south and intersect base lines that run east to west to form the starting point for land measurement using the rectangular survey system of land description.

metes and bounds Method of legal description of land using distances (called metes) measured from a point of beginning and using natural or artificial boundaries (called bounds), as well as single objects (called monuments or markers) as points of reference.

minor A person younger than 18 years of age.

mobile home A structure transportable in one or more sections, designed and equipped to contain no more than two dwelling units, to be used with or without a foundation system; does not include a recreational vehicle.

mobile home park Any area or tract of land where two or more mobile home lots are rented, leased, or held out for rent or lease.

monument See **metes and bounds**.

mortgage A legal instrument by which property is pledged by a borrower, the mortgagor, as security for the payment of a debt or an obligation owed to a lender, the mortgagee.

Mortgage Loan Disclosure Statement The statement on a form approved by the real estate commissioner that is required by law to be furnished by a mortgage loan broker to the prospective borrower of a loan of a statutorily prescribed amount before the borrower becomes obligated to complete the loan.

multiple listing clause Clause in a listing agreement, usually part of an exclusive authorization and right-to-sell listing, taken by a member of a multiple listing service, providing that members of the multiple listing service will have the opportunity to find a ready, willing, and able buyer for the listed property.

multiple listing service (MLS) An organization of real estate agents providing for a pooling of listings and the sharing of commissions on transactions involving more than one agent.

narrative appraisal report The longest and most thorough appraisal report, containing a summary of all factual materials, techniques, and appraisal methods used in setting forth the appraiser's conclusion of value.

negotiable instrument An instrument, such as a promissory note, that is capable of being assigned or transferred in the ordinary course of business.

net listing A listing agreement providing that the agent may retain as compensation for services all sums received over and above a net price to the owner.

net, net, net lease See **triple net lease**.

net operating income Profit; the money remaining after expenses are deducted from income.

niche marketing Specialization in an area, type of property, and/or category of buyer.

nonexclusive listing See **open listing**.

notice Knowledge of a fact; actual notice is express or implied knowledge of a fact; constructive notice is knowledge of a fact that is imputed to a person by law because of the person's actual notice of circumstances and the inquiry that a prudent person would have been expected to make; legal notice is information required to be given by law.

novation The substitution or exchange of a new obligation or contract for an old one by mutual agreement of the parties.

null and void Of no legal validity or effect.

observed condition method Breakdown method; depreciation computed by estimating the loss in value caused by every item of depreciation, whether curable or incurable.

one hundred percent commission An office where salespersons pay broker fees but keep commissions earned.

open listing Nonexclusive listing; the nonexclusive right to secure a purchaser, given by a property owner to a real estate agent; more than one agent may be given such authorization, and only the first to procure a ready, willing, and able buyer—or an offer acceptable to the seller—will be entitled to compensation.

opinion of title An attorney's written evaluation of the condition of the title to a parcel of land after examination of the abstract of title.

option A right given for a consideration to purchase or lease property on specified terms within a specified time, with no obligation on the part of the person receiving the right to exercise it.

option ARM Adjustable-rate mortgage where the buyer has the option of making a minimum payment.

overriding trust deed See **wraparound mortgage or trust deed**.

ownership in severalty Separate ownership; ownership of property by one person only.

participation loan A loan where the lender takes an equity position in the property, as well as interest for the loan.

partition action Court proceeding by which co-owners may force a division of the property or its sale, with co-owners reimbursed for their individual shares.

partnership See **general partnership**.

percentage lease Provides for rent as a percentage of the tenant's gross income, usually with a minimum base amount; the percentage may decrease as the tenant's income increases.

personal property All property that is not real property.

physical deterioration Loss in value brought about by wear and tear, disintegration, use and action of the elements.

piggyback loan A second mortgage taken out at the same time as the first mortgage to reduce down payment requirements and/or avoid the need for private mortgage insurance.

plaintiff The person who sues in a court action.

planned unit development (PUD) A land-use design that provides intensive utilization of the land through a combination of private and common areas with prearranged sharing of responsibilities for the common areas; individual lots are owned in fee with joint ownership of open areas; primarily residential but may include commercial and/or industrial uses.

planning commission An agency of local government charged with planning the development, redevelopment, or preservation of an area.

plottage Assemblage; an appraisal term for the increased value of two or more adjoining lots when they are placed under single ownership and available for use as a larger single lot.

pocket listing A listing not provided to other brokers.

points One point represents one percentage point of a loan amount; may be charged by lenders at the time of loan funding to increase the loan's effective interest rate.

police power The right of government to enact laws and enforce them to benefit the public health, safety, and general welfare.

power of attorney A written instrument authorizing an agent to act in the capacity of the principal; a general power of attorney provides authority to carry out all of the business dealings of the principal; a special power of attorney provides authority to carry out a specific act or acts.

power of sale The power that may be given by a promissory note to a trustee, a mortgagee, or another lienholder to sell secured property without judicial proceedings if the borrower defaults.

predatory lending Making loans without regard to payment ability of borrower in order to obtain the security by foreclosure.

primary mortgage market Composed of lenders that deal directly with borrowers. *See also* **secondary mortgage market**.

prime rate Interest rate that banks charge their most favorably rated commercial borrowers.

principal The employer of an agent; one of the parties to a transaction; the amount of money borrowed.

private mortgage insurance (PMI) Mortgage guaranty insurance available to conventional lenders on the high-risk portion of a loan, with payment included in the borrower's loan installments.

probate Court proceeding by which the property of a decedent is distributed according to the decedent's will or, if the decedent died intestate (without a will), according to the state law of intestate succession.

procuring cause The cause originating a series of events that lead directly to the intended objective; in a real estate transaction, the procuring cause is the real estate agent who first procures a ready, willing, and able buyer.

progression, principle of The worth of a less-valuable building tends to be enhanced by proximity to buildings of greater value.

promissory note A written promise to repay a loan under stipulated terms; establishes personal liability for payment by the person making the note.

property management A branch of the real estate business involving the marketing, operation, maintenance, and other day-to-day requirements of rental properties by an individual or a firm acting as agent of the owner.

proration Adjustment of interest, taxes, insurance, and other costs of property ownership on a pro rata basis as of the closing or agreed-upon date; usually apportions those costs based on seller's and buyer's respective periods of ownership.

puffing Exaggerating the attributes or benefits of property as an inducement to purchase.

purchase money mortgage or trust deed Trust deed or mortgage given as part or all of the purchase consideration for real property.

qualified mortgage Loans that meet standards for HUD insurance.

quantity survey method Way of estimating building reproduction cost by making a thorough itemization of all construction costs, both direct (material and labor) and indirect (permits, overhead, profit), then totaling those costs.

quiet title See **action to quiet title**.

quitclaim deed A deed that conveys any interest the grantor may have in the property at the time of the execution of the deed, without any warranty of title or interest.

ranges In the rectangular survey system of land description, townships running east and west of a meridian.

ratification The adoption or approval of an act by the person on whose behalf it was performed, as when a principal ratifies conduct of an agent that was not previously authorized.

ready, willing, and able buyer A buyer who wants and is prepared to purchase property, including being able to finance the purchase, at the agreed price and terms.

real estate Real property; land; includes the surface of the earth, the substances beneath the surface, the airspace above the surface, fixtures, and anything incidental or appurtenant to the land.

real estate board A local organization whose members consist primarily of real estate brokers and salespeople.

real estate broker A person employed for a fee by another to carry on any of the activities listed in the real estate law definition of a broker.

Real Estate Education and Research Fund California fund financed by a fixed portion of real estate license fees, designed to encourage research in land use and real estate development.

real estate investment trust (REIT) Way for investors to pool funds for investments in real estate and mortgages, with profits taxed to individual investors rather than to the corporation.

real estate salesperson A person licensed under the provisions of the real estate law to act under the control and supervision of a real estate broker in carrying on any of the activities listed in the license law.

real estate syndicate An organization of real estate investors, typically in the form of a limited partnership.

real property See **real estate**.

reconciliation In appraising, the final step, in which the estimates of value reached by each of the three appraisal approaches (sales comparison, cost, and income capitalization) are weighed in light of the type of property being appraised, the purpose of the appraisal, and other factors, to arrive at a final conclusion of value.

reconveyance deed Instrument by which the trustee returns title to the trustor after the debt underlying a deed of trust is paid.

recovery account State fund financed by real estate license fees and intended to help compensate victims of real estate licensee fraud, misrepresentation, deceit, or conversion of trust funds, when a court-ordered judgment cannot be collected.

rectangular survey system Section and township system; U.S. government survey system; method of legal description of land using areas called townships measured from meridians and base lines.

recurring costs Impound costs for taxes and insurance.

red flag A physical indication of a possible problem with a property.

redlining An illegal lending policy of denying real estate loans on properties in older, changing urban areas (usually with large minority populations) because of alleged higher lending risks, without due consideration of the individual loan applicant.

reformation An action to correct a mistake in a contract, a deed, or another document.

regression, principle of A building's value will decline if the buildings around it have a lower value.

release Removal of part of a contract obligation, for consideration, by the party to whom the obligation is owed; removal of part of a property from a lien on payment of part of the debt owed.

reliction The increase of a landowner's property by the receding of an adjacent body of water.

remainder The right of future possession and use that will go to someone other than the grantor upon termination of a life estate.

rent The consideration paid for possession and use of leased property.

rent control A regulation imposed by a local governing body as a means of protecting tenants from relatively high rent increases over the occupancy period of a lease; if a law provides for vacancy decontrol, when a unit becomes vacant, there is no restriction on the rent set for a new tenant.

REOs Foreclosure real estate owned by lender.

repair and deduct Tenant's remedy when landlord is on notice of and fails to make necessary repairs to leased premises; a tenant may spend up to one month's rent on repairs, but no more than twice in any 12-month period.

replacement cost The cost of a new building using modern construction techniques, design, and materials but having the same utility as the subject property.

reproduction cost The cost of a new building of exactly the same design and materials as the subject property.

rescission The cancellation of a contract and restoration of the parties to the same position they held before the contract was formed.

restraint on alienation An illegal condition that would prohibit a property owner from transferring title to real estate.

restriction A limitation on the use of real property; public restrictions imposed by government include zoning ordinances; private restrictions imposed by deed may require the grantee to do or refrain from doing something. *See also* CC&Rs.

reverse exchange Delayed exchange where the property desired is acquired prior to sale of exchanger's property.

reverse mortgage Mortgage where the borrower receives payments and does not repay loan until the property is sold or the borrower dies.

reversion The right of future possession and use retained by the grantor of a life estate.

right of appropriation Right of government to take, impound, or divert water flowing on the public domain from its natural course for some beneficial purpose.

right of entry The right of the landlord to enter leased premises in certain circumstances.

right of survivorship The right of surviving cotenants to share equally in the interest of a deceased cotenant; the last surviving cotenant is sole owner of the property.

riparian rights The right of a landowner whose property borders a lake, river, or stream to the use and enjoyment of the water adjacent to or flowing over the property, provided the use does not injure other riparian landowners.

Rumford Act California's fair housing law. Also called the Fair Employment and Housing Act.

safety clause A clause that protects the broker's commission when a sale is consummated after a listing expires to a buyer procured by the broker.

sale-leaseback A transaction in which, at the time of sale, the seller retains occupancy by concurrently agreeing to lease the property from the purchaser.

sales comparison approach Market comparison approach; market data approach; appraisal method in which the sales prices of properties that are comparable in construction and location to the subject property are analyzed and adjusted to reflect differences between the comparables and the subject.

sales contract Land contract; installment sales contract; a contract used in a sale of real property whereby the seller retains title to the property until all or a prescribed part of the purchase price has been paid, but no earlier than one year from the date of possession.

salvage value In computing depreciation for tax purposes under all but the declining balance method, the reasonably anticipated fair market value of the property at the end of its useful life.

sandwich lease A leasehold interest between the primary lease and the operating lease.

satisfaction Discharge of an obligation before the end of its term by payment of the total debt owed.

scheduled rent Rent charged, not adjusted for rental incentives.

secondary financing A loan secured by a second (or subsequent) mortgage or trust deed on real property.

secondary mortgage market Investment opportunities involving real property securities, other than direct loans from lender to borrower; loans may be bought, sold, or pooled to form the basis for mortgage-backed securities.

section A standard land area of one mile square, containing 640 acres, used in the rectangular survey system of land description.

section and township system See **rectangular survey system**.

security deposit An amount paid at the start of a lease term and retained by the landlord until the tenant vacates the premises, all or part of which may be kept by the landlord at that time to cover costs of any default in rent

payments or reasonable costs of repairs or cleaning necessitated by the tenant's use of the premises.

security instrument A written document executed by a debtor that pledges the described property as the lender's assurance that the underlying debt will be repaid.

seller's market Real estate market with more buyers than sellers.

separate property Property owned by a married person other than community property, including property owned before marriage, property acquired by gift or inheritance, income from separate property, and property acquired with the proceeds of separate property.

servient tenement See **easement**.

set-back ordinance An ordinance requiring improvements built on property to be a specified distance from the property line, street or curb.

severalty, ownership in See **ownership in severalty**.

sheriff's deed Deed given to the purchaser at a court-ordered sale to satisfy a judgment, without warranties.

short sale A sale for less than is owed on a loan where the lender agrees to accept sale proceeds to extinguish the debt.

sick building syndrome Illness attributed to a sealed structure; believed related to ventilation.

simple interest Interest computed on the principal amount of a loan only. See **compound interest**.

sinking fund Fund set aside from the income from property that, with accrued interest, eventually will pay for replacement of the improvements.

social media Interactive apps that allow for social networking.

sole proprietor Only owner of a business.

special limitation A limiting condition specified in a transfer of fee simple ownership that, if not complied with, will immediately and automatically extinguish the estate and return title to the grantor.

special studies zone One of the areas, typically within a quarter-mile or more of an active earthquake fault, requiring a geologic report for any new project involving improvements or structures initiated after May 4, 1975; the report may be waived by the city or county if the state geologist approves.

special warranty deed A deed in which the grantor warrants or guarantees the title only against defects arising during the grantor's ownership of the property and not against defects existing before the time of the grantor's ownership.

specific performance Action to compel a breaching party to adhere to a contract obligation, such as an action to compel the sale of land as an alternative to money damages.

specific plan Formulated after adoption of a general plan by a city or a county to give further details of community development, including projected population density and building construction requirements.

square-foot method Way of finding reproduction cost by multiplying the current cost per square foot of a comparable building by the number of square feet in the subject building.

staging Preparing a home for sale showings.

standard parallels See **correction lines**.

statute of frauds A state law requiring that certain contracts be in writing and signed before they will be enforceable, such as a contract for the sale of real estate.

statute of limitations Law that stipulates the specific time period during which a legal action must be brought following the act that gives rise to it.

statutory warranty deed A short-term warranty deed that warrants by inference that the seller is the undisputed owner, has the right to convey the property, and will defend the title if necessary; if the seller does not do so, the new owner can defend against said claims and sue the former owner.

steering The illegal act of directing prospective homebuyers to or from a particular residential area on the basis of the homebuyer's race or national origin.

step-up lease Lease with set rent that provides for periodic rent increases.

stock cooperative A form of subdivision, typically of an apartment building, in which each owner in the stock cooperative is a shareholder in a corporation that holds title to the property, each shareholder being entitled to use, rent, or sell a specific apartment unit. See also **limited equity housing cooperative**.

straight-line method Depreciation computed at a constant rate over the estimated useful life of the improvement.

straight note A note in which a borrower repays the principal in a lump sum at maturity, with interest due in installments or at maturity.

stratified market Sales market difference by price.

subdivision The division of real property into separate parcels or lots for the purpose of sale, lease, or financing.

subdivision public report Issued by the real estate commissioner after a subdivision developer has met the requirements of the Subdivided Lands Law; provides details of the project and financing, and a copy must be given to all prospective purchasers; sales may begin on the basis of an approved preliminary public report, but no sales can be closed or transactions completed until the final public report is received.

subject to When a grantee takes title to real property "subject to" a mortgage or a trust deed, the grantee is not responsible to the holder of the promissory note for the payment of any portion of the amount due, and the original maker of the note retains primary responsibility for the underlying debt or obligation.

sublease A lease given by a lessee (tenant).

subordination agreement An agreement by the holder of an encumbrance against real property to permit that claim to take an inferior position to other encumbrances against the property.

subprime lender A lender who will take loans that are considered too risky by other lenders. Subprime loans bear a higher rate of interest.

substitution, principle of Market value tends to be set by the present or recent cost of acquiring an equally desirable and valuable property, comparable in construction and/or utility.

- supply and demand, principle of** Takes into account the effect on market value of the relationship between the number of properties on the market at a given time and the number of potential buyers.
- survey** The process by which a parcel of land is measured and its area ascertained.
- syndicate, real estate** See **real estate syndicate**.
- take-out loan** The loan arranged by the owner or builder developer for a buyer; the permanent financing that pays off and replaces the interim loan used during construction.
- tax deed** Deed issued by the county tax collector when property is sold at public auction because of nonpayment of taxes.
- tax shelter** Use of passive loss depreciation to shelter active income from taxation.
- tenancy in common** Co-ownership of property in equal or unequal shares by two or more persons, each holding an undivided interest without right of survivorship.
- tenancy in partnership** The ownership by two or more persons, acting as partners, of property held for partnership purposes.
- tenant** Lessee under a lease; one who has the legal right to possession and use of property belonging to another.
- tentative subdivision map** The initial or tentative map required of subdividers by the Subdivision Map Act, submitted to the local planning commission, which notes its approval or disapproval; a final map embodying any changes requested by the planning commission also must be submitted.
- testator** A person who makes a will.
- third-party originator** A party who prepares loan applications for borrowers and submits the loan package to lenders.
- tiers** In the rectangular survey system of land description, townships running north and south of a base line.
- time-share estate** A right of occupancy in a time-share project (subdivision) coupled with an estate in the real property.
- time-share project** A form of subdivision of real property into rights to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or segment of the property on an annual or other periodic basis, for a specified period.
- time-share use** A license or contractual or membership right of occupancy in a time-share project that is not coupled with an estate in the real property.
- title insurance** Insurance to protect a real property owner or a lender up to a specified amount against certain types of loss affecting title or marketability.
- tort** Any wrongful act, other than a breach of contract, for which a civil action may be brought by the person wronged.
- township** A standard land area of six miles square, divided into 36 sections of one mile square each, used in the rectangular survey system of land description.
- toxic mold** Usually a greenish black mold that causes respiratory problems. It usually grows on material with a high cellulose content.

trade fixtures Articles of personal property that are annexed by a business tenant to real property that are necessary to the carrying on of a trade and are removable by the tenant.

triple net lease Guarantees a specified net income to the landlord, with the tenant paying that amount, plus all operating and other property expenses, such as taxes, assessments, and insurance.

trust account An account separate from a broker's own funds (business and personal) in which the broker is required by law to deposit all funds collected for clients before disbursement.

trust deed A deed issued by a borrower of funds (the trustor) conveying title to a trustee on behalf of a lender, the beneficiary of the trust; the trust deed authorizes the trustee to sell the property to pay the remaining indebtedness to the beneficiary if the trustor defaults on the underlying obligation.

trustee One who holds property conveyed by a trustor on behalf of (in trust for) the beneficiary, to secure the performance of an obligation.

trustee in bankruptcy See **bankruptcy**.

trustee's deed Deed given to the purchaser at a foreclosure sale by the trustee acting under a deed of trust.

trustor One who conveys property to a trustee to hold on behalf of (in trust for) a beneficiary to secure the performance of an obligation; borrower under a deed of trust.

Truth in Lending Act Federal act requiring loan term disclosures, as well as advertising disclosures.

U.S. government survey system See **rectangular survey system**.

undue influence Use of a fiduciary or confidential relationship to obtain a fraudulent or an unfair advantage over another person because of that person's weakness of mind, distress, or necessity.

Uniform Commercial Code Establishes a unified and comprehensive method for regulation of security transactions in personal property, superseding the existing statutes on chattel mortgages, conditional sales, trust receipts, assignments of accounts receivable, and others in this field.

unit-in-place method Way of estimating building reproduction cost by adding the construction cost per unit of measure of each of the component parts of the subject property; each unit cost includes material, labor, overhead, and builder's profit.

universal exclusion Exclusion of amount from capital gains tax for principal residence occupied for two years.

unlawful detainer The legal action that may be brought to evict a tenant who is in unlawful possession of leased premises.

Unruh Act California's antidiscrimination act that applies to businesses.

upside-down loan A loan that exceeds the fair market value of a property.

useful life The period of years in which a property improvement may be used for its originally intended purpose.

usury The charging of a rate of interest on a loan that is greater than the rate permitted by law.

vacancy decontrol See **rent control**.

- vacancy factor** The percentage of a building's space that is unrented over a given period.
- value in use** The subjective value of property to its present owner, as opposed to market value, which should be objective.
- vicarious liability** A principal is liable for wrongful and negligent acts of the agent within the scope of the agency.
- void** To have no force or effect; that which is unenforceable.
- voidable** That which can be adjudged void but is not void unless action is taken to make it so.
- waiver** The giving up of a right or privilege voluntarily.
- warranties, implied** See **implied warranties**.
- warranty deed** A deed that expressly warrants that the grantor has good title; the grantor thus agrees to defend the premises against the lawful claims of third persons.
- warranty of habitability** Legally implied obligation of a landlord to meet minimal housing and building standards.
- will** A written, legal declaration of a person called a *testator*, expressing the testator's desires for the disposition of the testator's property after death.
- wraparound mortgage or trust deed** Overriding or all-inclusive trust deed; a financing device in which a lender assumes payments on an existing mortgage or trust deed and takes from the borrower a junior mortgage or trust deed with a face value in an amount equal to the amount outstanding on the old instrument and the additional amount of money borrowed.
- writ of execution** Court order directing the sheriff or another officer to satisfy a money judgment out of the debtor's property, including real estate not exempt from execution.
- writ of possession** Order issued by the court directing the sheriff or the marshal to take all legal steps necessary to remove the occupant(s) from the specified premises.
- yield** Profit; return; the interest earned by an investor on an investment or by a bank on the money it has loaned.
- zoning** An act of city or county government specifying the possible uses of property in a particular area.

ANSWER KEY

Unit 1

1. **b** The real estate marketplace could best be described as being stratified based on price. Demand and supply could vary in different price ranges. p. 4
2. **a** Most real estate agents are primarily involved in residential property sales because most properties sold are residential. p. 11
3. **b** Real estate salespersons will be treated by the IRS as independent contractors if: the salesperson's reimbursement is based solely on sales, not hours worked; there is a written contract stating that the salesperson shall be treated as an independent contractor for tax purposes; and the salesperson is licensed as a real estate agent. Merely representing oneself as an independent contractor would be a violation of disclosure requirements and is not considered to be an IRS criteria. p. 13
4. **b** A broker is ordinarily liable to salespersons for workers' compensation which covers work-related injuries. p. 16
5. **c** When choosing a broker, a new licensee should remember that training is more important than commission split for new licensees. p. 21
6. **d** The best way to learn is to use the ideas you observe or read about. By using ideas, they become yours. p. 25
7. **d** Role-playing situations are only limited by imagination and can be verbalized or nonverbalized. They can also involve more than one person. p. 27
8. **c** Exact goals are measurable, such as setting a number of calls you plan to make or appointment for showings to make. p. 30
9. **c** It is important to make goals attainable, based on what you want, and exact. Goals should also be shared so you are accountable for making them. When no one knows the goals, it is easier to abandon them. p. 30
10. **d** Proper daily planning should: increase "A" Time activities, and place more emphasis on probabilities than possibilities. p. 31

Unit 2

1. **a** If a group of brokers agree to not allow another broker to show any of their listings, this is called a group boycott and is prohibited by the Sherman Act. p. 65
2. **b** What is legal but unethical is likely to become illegal. p. 48
3. **d** All of the following phrases indicate a discriminatory preference: “Christian family,” “Prefer working married couple,” and “Just two blocks to St. Michael’s.” p. 56
4. **b** If an employer widens the doorway to a restroom to allow wheelchair access, this is considered reasonable accommodation for handicapped and complies with the Americans with Disabilities Act (ADA). p. 56
5. **d** The Civil Rights Act of 1866 covers racial discrimination and originally gave rights to former slaves. p. 53
6. **d** If a broker specifically shows prospective buyers homes based on racial make-up, this is illegal, unethical, and known as steering. It is specifically prohibited by Civil Rights Act of 1968. p. 54
7. **c** A broker can only refuse to show a property to a prospective buyer if the development has an age exemption because all occupants are 55 years of age or older. This is an exception to Fair Housing Act. p. 55
8. **d** A landlord cannot refuse to rent to protected classes. p. 55
9. **a** The state act that specifically prohibits discrimination in business establishments is the Unruh Act. p. 60
10. **d** Placing trust funds in the personal care of a bonded employee is a violation of the law. pp. 66–67

Unit 3

1. **d** In a real estate transaction, the agent has a fiduciary duty to their principal, must disclose any known detrimental information to a buyer (even if representing the seller), and must disclose any material facts to their principal. p. 88
2. **d** Agency disclosure applies to commercial and residential units and listing agent can only be seller’s agent or dual agent. pp. 90–91
3. **d** The confirmation of agency must be in writing, the three steps of the disclosure process are disclose, elect, and confirm, and the selling agent must confirm the agency prior to the buyer making an offer. pp. 90–91
4. **b** A seller of one to four residential units must provide a Real Estate Transfer Disclosure Statement. pp. 95–96
5. **c** An agent’s duty of inspection and disclosure covers a visual inspection only of readily accessible areas. p. 102
6. **a** Earthquake safety disclosure only applies to 1–4-unit residential properties. p. 106
7. **a** The buyer must sign to acknowledge receipt of a booklet relating to environmental hazards. There is also a booklet Residential Guide to Earthquake Safety for which the buyer also signs a receipt. p. 106
8. **b** Brownfields is a term used to describe contaminated soil. p. 113

9. **c** The purpose of the Subdivided Lands Law is to protect purchasers from fraud. p. 113
10. **a** The right of rescission is provided by law for purchase agreements involving time-shares and undivided interest subdivisions. p. 122

Unit 4

1. **b** The CAN-SPAM Act puts control on unsolicited misleading emails. p. 138
2. **c** Unlicensed party is limited to introduction and may not engage in any sales activities. pp. 148–149
3. **d** Direct mail solicitation for listings is more effective if you indicate you will be contacting them. This forces the recipient to think about your call. You must consider the do-not-call register. p. 137
4. **d** Under do-not-call regulations, it would be proper to make a call for survey purposes or as an agent of a prospective buyer. p. 136
5. **d** Owners of single housing units would often rather sell than rent. p. 142
6. **d** A notice of vacancy is not a legal action. Notices of eviction, foreclosure, and probate are all legal notices and can provide good leads for listings. pp. 143–144
7. **d** A high vacancy rate, tenant evictions, and code violations are all indications that an owner might be interested in selling an income property. pp. 153–154
8. **b** Endless chain refers to obtaining additional prospects from every lead. p. 148
9. **d** The real estate term farming refers to working or prospecting a geographic area or special interest area for buyers and sellers. p. 153
10. **d** A nongeographic farm would be specialization in mobile homes, income property, or lots. p. 154

Unit 5

1. **c** A comparative market analysis (CMA) shows comparable sale prices and is used to estimate value for listing purposes. p. 164
2. **c** The most important portion of your analysis is the prices of comparable properties that have sold since it shows the reality of the marketplace. p. 164
3. **c** For data used on the CMA, the older the data, the less reliable and sales prices that seem unusually high or low are often the result of market imperfections. pp. 164–165
4. **c** Owners must be made to realize that the higher they price their home over fair market value, the longer it will take to sell and the lower the likelihood of a sale during the listing period. The agent is not doing the seller a favor by taking a listing over market value. p. 168
5. **c** A recommended list price below what the CMA indicates is in an owner's best interest when the seller must sell quickly. p. 168
6. **d** What a seller receives in hand from a sale is the seller's net proceeds. p. 171
7. **b** The principal reason owners try to sell their homes without an agent is to save the commission. Even when not specifically stated, it is frequently the reason an owner wants to try to sell without an agent. p. 174

576 Answer Key

8. **d** Your listing presentation book material should be organized to follow your listing presentation, should not be used in lieu of a verbal presentation, and can be helpful in selling an owner on the concept of listing in general and listing with your firm in particular. p. 171
9. **d** When selling the benefits of listing with a small office, the best approach would be to emphasize that you specialize in a small number of select properties. p. 181
10. **d** The shorter time to sell is positive while a percentage of success indicates a percentage of failure. p. 188

Unit 6

1. **d** A valid exclusive listing requires a lawful purpose, mutual consent, and consideration. p. 196
2. **d** A verbal listing is unenforceable. p. 196
3. **b** If an open listing is sold by any other party, the listing broker is not entitled to any compensation. This makes it least attractive to a broker and the least likely to be advertised. pp. 197–198
4. **c** A listing under which the owner can sell the listed property without paying a commission but the agent is nevertheless an exclusive agent is an exclusive agency listing. p. 199
5. **b** Would be entitled to commission if there was a valid listing. p. 198
6. **d** An exclusive-right-to-sell listing likely includes an agency relationship disclosure, an attorney fee provision, and an arbitration agreement. pp. 198–199
7. **d** In an exclusive-right-to-sell listing, escrow does not have to close for an agent to be entitled to a commission. Additionally, it must have a termination date for the agent to collect a commission, and the agent must give the owner a copy of the listing when the owner signs. It is not true that the agent is precluded from working with other agents to sell the property. pp. 198–199
8. **c** The type of listing that has the greatest likelihood of resulting in a sale is an exclusive-right-to-sell listing as it has the best outcome for the agent's work. pp. 198–199
9. **d** If an owner tells you that another agent told them that they could get far more for the property than your CMA indicated, your best response would be to state that your CMA covers all recent comparables and clearly shows the market value. Asking to see the CMA prepared by the other agent would be a good idea. p. 215
10. **d** By taking a listing at a low fee that will result in a less than normal fee for any cooperating brokers you are not benefiting your office, the selling office, or the owner. p. 217

Unit 7

1. **b** The most likely reason why an expired listing was not extended with the original listing office is dissatisfaction with communications. p. 227
2. **a** Agent advice to owners on showing their home could include cleaning instructions, landscaping instructions, and repair instructions. However, having the owners present for an open house would probably not be encouraged because buyers are less likely to feel at ease and will not openly discuss their feelings when owners are present. pp. 229–330

3. **a** If there has been little or no interest in a property, the agent should convey this information to the sellers. p. 233
4. **c** Standard system used by many lenders. p. 252
5. **b** It is good to get neighborhood information from owners to give your listings a competitive advantage. p. 234
6. **c** An owner should understand that a list price above the CMA is merely a hope unsupported by fact. Adjusting a price gives nothing away because there is no buyer, and without a buyer there is only an offering price. p. 237
7. **c** Placing a rider strip on your listing to show positive features not readily seen such as “4 bedrooms”. p. 238
8. **b** A property brief should not be used as a substitute for other types of advertising. They are, however, great for a handout at open houses, a handout at caravans, and as a mailing piece in response to enquiries. p. 241
9. **a** A broker open house is of greatest value when it is in a large market because many agents may miss the caravan. p. 247
10. **d** Advantages of open houses include pleasing owners because they indicate activity, they locate buyers for other properties, and they can obtain leads for listings. They also assist in marketing the property that is open for inspection. p. 248

Unit 8

1. **b** The AIDA approach includes: attention, interest, desire, and action. pp. 260–261
2. **d** Personal advertising includes name tags, calling cards, blogs and car signs. p. 263
3. **b** The term logo refers to an identifying design or symbol. p. 263
4. **c** Blind ads fail to include broker identification. p. 265
5. **b** The most cost-effective advertising medium for selling a home would be the internet. p. 270
6. **a** Most effective medium. p. 265
7. **d** Sells the firm, not a specific property. p. 260
8. **c** An advertiser with an extremely low advertising budget would most likely avoid billboards. Press releases, For Sale signs, and the internet are relatively low- or no-cost. p. 267
9. **d** Capital letters are not easier to read than lowercase letters. However, it is true that readers’ eyes tend to move from upper left to lower right, one large picture is generally more effective than several smaller ones, and short words are easier to read than long ones. p. 266
10. **c** In preparing display ads, a good advertiser should use no more than two typefaces per ad. p. 266

Unit 9

1. **d** Callers from a For Sale sign are likely to be satisfied with the area and with the general exterior appearance, or they would not have called. p. 284
2. **c** In general, callers from signs are more likely to end up buying homes that cost less than the home they called about and callers from ads are more likely to end up buying homes that cost more than the home they called about. p. 285
3. **d** There is duty to attempt to best meet needs of buyers. pp. 302, 306
4. **d** In showing property, you should adjust to needs of purchaser and show properties based on needs. pp. 302, 306
5. **d** The qualifying period includes discovering the buyers' motivation, needs, and interests, as well as a down payment they can make and the amount they can finance. p. 295
6. **a** The front-end qualifying ratio is the ratio of gross housing cost to gross income. p. 295
7. **b** The back-end qualifying ratio refers to the ratio of total housing expense plus long-term debt to gross income. p. 295
8. **c** You need information to sell and open-end questions elicit information. p. 293
9. **d** All reduce likelihood of becoming a victim. pp. 291
10. **c** If another agent is showing a home when you arrive for a showing, you should wait inconspicuously until the other agent completes the showing and leaves. p. 314

Unit 10

1. **d** A good salesperson does not use technical terms to impress buyers, does not speak fast to reach closing, and does not approach each customer in the same way. pp. 322–326
2. **d** A love of family, comfort and convenience, and security are all buying motives. pp. 327–328
3. **d** Disadvantages of home ownership include increase in expenses, risk, and a lack of liquidity. p. 330
4. **d** Buying signals could include whispering with a spouse, pacing off a room, or seeming reluctant to leave a property. p. 331
5. **d** Asking a question is the best response to, "The price is too high." "Why?" would have been the appropriate first question. pp. 332–333
6. **d** A professional salesperson knows that it is more effective to ask than tell, it is good to appeal to emotions, and it is not recommended to be assertive with a cautious buyer. pp. 325, 326, 330
7. **b** When asking a prospective buyer whether he would prefer one of a range of dates, you are using the positive choice closing technique. p. 336
8. **a** The paragraph in the purchase contract referring to the intent to occupy is important because it relates to liquidated damages. p. 357
9. **d** The buyer and seller by mutual agreement can modify an accepted offer to purchase. p. 359
10. **b** The buyer is responsible for the damage to the air conditioning unit based on the California Residential Purchase Agreement and Joint Escrow Instructions. pp. 344, 357

Unit 11

1. **b** The three separate sales involved in selling real estate are: obtaining the listing, obtaining the offer, and gaining acceptance of the offer. p. 372
2. **c** When you receive two offers on a listed property, you should present the offers at the same time and in a nonprejudicial manner, no matter the source of the offers. p. 374
3. **a** The owner could feel the listing price was too low if the offer was received three days after listing the property. p. 375
4. **c** When presenting an offer on your listing for less than list price, it is good policy to recommend that the sellers counter or reject offers when acceptance is not in their best interest. pp. 376–377
5. **c** The common buyer apprehension felt after placing an offer is known as buyer's remorse. p. 377
6. **b** Once a counteroffer is not accepted, the owner does not have the option of accepting the original offer. Question asks, "Not True." p. 377
7. **a** If an offer received on your listing contains the word "subordination," you should be wary. p. 378
8. **c** Rent skimming is a buyer's failure to apply rents to loans that were assumed. p. 379
9. **d** If a reasonable, but lower than listing price, offer is received, you should recommend to the owners that they accept the offer. p. 377
10. **d** After an offer is accepted, the listing agent should keep track of the escrow progress, make certain all papers are signed by the parties, and make certain that conditions are being met. pp. 387–388

Unit 12

1. **b** A loan covering more than one property would be a blanket encumbrance. p. 411
2. **a** A reverse mortgage has compound interest. p. 414
3. **c** The difference between the interest rate of an index and the rate charged by the lender under an ARM is known as the margin. p. 416
4. **b** A lender who believes that interest rates will rise significantly will be least interested in a 30-year fixed-rate mortgage, although a borrower might prefer it. p. 412
5. **a** A danger that ARMs pose to buyers is the threat of higher payments if interest rates increase. pp. 414, 421
6. **d** With an adjustable-rate loan index at 6% at the time the loan is made, a margin for the loan at $2\frac{1}{2}\%$, and a 5% lifetime cap, the highest the interest rate could go is $13\frac{1}{2}\%$. p. 416
7. **b** A convertible ARM is a loan that can be changed to a fixed-rate loan. p. 419
8. **d** A buyer who intends to sell a house within two years would prefer a loan with no prepayment penalty, a loan with low initial loan costs, and an assumable loan. p. 421
9. **b** An adjustable-rate mortgage is most likely to meet all the criteria of a buyer who intends to sell a house within two years (no prepayment penalty, low initial loan costs, and assumable). p. 421
10. **c** An expansionary policy of the Federal Reserve would be to buy government securities putting more money into the economy. p. 397

Unit 13

1. **d** An exception to escrow licensing, a broker can act as an escrow when the broker is a principal or represents the buyer or seller in the transaction. p. 441
2. **a** An escrow company is prohibited from paying referral fees to anyone other than an employee of the escrow company. p. 442
3. **b** To determine the balance due on a loan, escrow requires a beneficiary statement. p. 446
4. **c** First trust deed to be assumed by the buyer is a debit to the seller on the seller's closing statement. pp. 447, 449
5. **d** First trust deed assumed is a credit to the buyer on the buyer's closing statement. Purchase price, escrow costs, and title insurance are debits. pp. 449–450
6. **d** An escrow company does not have a legal duty to warn parties of possible fraud or suggest changes when one party is not being adequately protected. p. 456
7. **b** A standard policy of title insurance is used to show that the seller has marketable title. It ensures against undisclosed encumbrances. pp. 456–457
8. **c** Unknown spousal interests are covered by the CLTA standard policy of title insurance. p. 457
9. **b** Liens placed by the insured are not covered by an ALTA extended policy of title insurance. However, mining claims, water rights, and off-record easements are. p. 458
10. **d** Title insurance companies do not give rebates to brokers for referrals, do not give brokers preferred rates on their own purchases, and cannot charge brokers the same as others but make no effort to collect. p. 460

Unit 14

1. **b** The most difficult tax to avoid is the real property tax because it cannot be hidden. p. 466
2. **a** The months of November, December, February, and April relate to real property taxes. p. 466
3. **d** Proposition 13 provided for a maximum tax rate, it set assessments for property acquired before 1978 back to the value on the 1975 tax roll, and allowed for a 2% per year tax increase. p. 469
4. **d** Proposition 19 provided for a tax assessment for certain homeowners to be transferred to any county in California. p. 470
5. **c** The homeowner's property tax exemption is \$7,000 from assessed value. p. 471
6. **d** Depreciation for a residential property uses the straight-line method and a 27½-year table. p. 473
7. **c** To have a tax-deferred delayed exchange, the exchange property must be identified within 45 days and must be completed within 180 days of the taxpayer relinquishing their property. p. 481
8. **b** To have a 1031 tax-deferred exchange, you need to have like-for-like properties, have a trade of investment real property for investment real property, and must hold property after the exchange in the same manner as you held property going into the exchange. pp. 479, 481
9. **b** If Albert wants to exchange property with Baker, cash received by Albert to balance equities would be boot to Albert in the exchange. Debt relief would also be boot. p. 481
10. **d** A homeowner can receive preferential tax treatment by an interest deduction, use of the universal exclusion, and a property tax deduction. p. 484

Unit 15

1. **b** The term CPM refers to Certified Property Manager of IREM. p. 497
2. **a** Compensation is generally a percentage of the gross. Percentage is lower for higher income properties. p. 514
3. **c** A property manager can be protected against receiving no fees when managing a vacant property they are unable to rent by a minimum fee. p. 508
4. **c** A lease for 30 months would be described as an estate for years because it is a definite fixed period. p. 513
5. **a** A lease under which the tenant is to pay \$500 per month for three years is a gross, or flat, lease (fixed rent). p. 514
6. **a** A lease that contains a minimum rent and a covenant to remain in business is a percentage lease. p. 515
7. **a** A parking lot would likely pay the highest percentage on a percentage lease. p. 515
8. **c** A supermarket would likely pay the lowest percentage on a percentage lease. p. 515
9. **b** A valid two-year lease need not contain a legal description of the property. p. 523
10. **d** Regarding security deposits, the following is true: nonrefundable cleaning deposits are not allowed, deposits for furnished rentals cannot exceed three months' rent, and security deposits for unfurnished rentals cannot exceed two months' rent. p. 525

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